



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2020

Ms. Mary Cheline Shine
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408a
Angleton, Texas 7751

OR2020-23385

Dear Ms. Shine:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 844953 (County Ref. Number: 20-1215).

The Brazoria County Sheriff's Office (the "sheriff's office") received a request for records related to a named inmate. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Upon review, we find portions of the submitted information consist of mental health records that are subject to chapter 611 of the Health and Safety Code.

Accordingly, the sheriff's office must withhold the submitted mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.¹

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." *Open Records Decision No. 546 (1990).*

Upon review, we find the remaining information constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that that were created or are maintained by someone under the supervision of a physician. Accordingly, the sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with the MPA.²

In summary, the sheriff's office must withhold the submitted mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

² As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

and Safety Code. The sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 844953

Enc. Submitted documents

c: Requestor
(w/o enclosures)