



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2022

Ms. June B. Harden
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2022-02058

Dear Ms. Harden:

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# 926568 (PIR# R010756).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a crime victims compensation case involving the requestor.¹ The OAG states it will release most of the requested information. The OAG claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

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. This section encompasses information protected by other statutes. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory

¹ We note the OAG sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed)

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). The OAG raises section 552.101 in conjunction with part 603 of title 20 of the Code of Federal Regulations, which implements the Federal-State Unemployment Compensation Program, and pertains to the confidentiality and disclosure of information related to state unemployment compensation programs. 20 C.F.R. § 603.1 (providing purpose and scope of part 603). Section 1302(a) of title 42 of the United States Code authorizes the Secretary of Labor (the “secretary”) to promulgate rules and regulations necessary to the efficient administration of the functions with which the secretary is charged. *See* 42 U.S.C. § 1302(a). Section 603.4 of title 20 of the Code of Federal Regulations requires state unemployment compensation agencies, such as the Texas Workforce Commission (the “commission”), must protect the confidentiality of unemployment claim information which “reveals the name or any identifying particular about any individual or any past or present employer or employing unit, or which could foreseeably be combined with other publicly available information to reveal any such particulars, and must include provision for barring the disclosure of any such information[.]” 20 C.F.R. § 603.4(b). “Claim information” means information about whether an individual is receiving, has received, or has applied for unemployment compensation, as well as “[a]ny other information contained in the records of the State [unemployment compensation] agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.” *Id.* § 603.2(a)(1)(i), (2)(ii). Information in the commission’s files may be disclosed to a requesting agency or other specified parties under certain circumstances. *See id.* §§ 603.5, .6, .21. Section 603.5(e) provides “[d]isclosure of confidential [unemployment compensation] information to a public official for use in the performance of his or her official duties is permissible.” *Id.* § 603.5(e). “Performance of official duties” means “administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official.” *Id.* Section 603.9 further states that for disclosures under section 603.5(e), the commission “must require the recipient to safeguard the information disclosed against unauthorized access or redisclosure . . . and must subject the recipient to penalties . . . for unauthorized disclosure[.]” and sets out the required safeguards. *Id.* § 603.9.

The OAG states Exhibit D consists of confidential unemployment claim information provided to the OAG by the commission. The OAG states the commission maintains this information as part of its administration of the state unemployment compensation program, and the commission has determined releasing this information to the OAG is necessary for the administration or enforcement of laws under the OAG’s purview. *See id.* § 603.5(e). The OAG further states it has executed a confidentiality agreement with the commission with respect to this information. *See id.* § 603.9. We therefore conclude Exhibit D is made confidential by section 603.4 of title 20 of the Code of Federal Regulations and must be withheld from the requestor pursuant to section 552.101 in conjunction with section 1302(a) of title 42 of the United States Code and section 603.4 of title 20 of the Code of Federal Regulations.

Section 552.101 of the Government Code also encompasses information protected by section 611.002 of the Health and Safety Code. Section 611.002 provides “[c]ommunications 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.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find the information we marked in Exhibit C constitutes a mental health record the OAG must withhold under section 552.101 in conjunction with section 611.002.³

Section 552.101 of the Government Code also encompasses 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).* Upon review, we find Exhibit B constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient’s medical records. Accordingly, the OAG must withhold the remaining information in Exhibit C under section 552.101 in conjunction with the MPA.⁴

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See*

³ We note this ruling does not affect an individual’s right of access to his or her own mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See Health & Safety Code §§ 611.004, .0045; cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (Medical Practice Act, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to a request for information under the Act).

⁴ We note this ruling does not affect an individual’s right of access to his or her own medical records from the physician who provided treatment under the MPA, subtitle B of title 3 of the Occupations Code. *See Occ. Code §§ 159.004, .005, .006; Tex. State Bd. of Pharmacy*, 391 S.W.3d 253.

Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Where a governmental body has custody of information relating to a case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the case and a representation from the law enforcement agency that it wishes to have the information withheld. The OAG informs us the Houston Police Department (the "department") states Exhibit B pertains to a criminal investigation it conducted that concluded in a result other than conviction or deferred adjudication and objects to the release of the information under section 552.108(a)(2). Therefore, we agree section 552.108(a)(2) is applicable to this information. Thus, the OAG may withhold Exhibit B under section 552.108(a)(2) on behalf of the department.

In summary, the OAG must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 1302(a) of title 42 of the United States Code and section 603.4 of title 20 of the Code of Federal Regulations. The OAG must withhold the information we marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The OAG must withhold the remaining information in Exhibit C under section 552.101 in conjunction with the MPA. The OAG may withhold Exhibit B under section 552.108(a)(2) of the Government Code on behalf of the department.

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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)