



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2022

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

OR2022-13119

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# 946615 (PIR No. R011770).

The Office of the Attorney General (the "OAG") received a request for a certain report, letter, or file regarding the requestor. The OAG states it will release most of the responsive information with redactions allowed by law, including sections 552.130(c) and 552.147(b) of the Government Code, certain information subject to section 552.139 of the Government Code, which we understand the OAG will do in accordance with Open Records Letter Nos. 2011-18124 (2011) and 2016-21830 (2016), and dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-17399 (2016).¹ The OAG claims

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b). In Open Records Letter No. 2011-18124, this office issued the OAG a previous determination authorizing it to withhold an employee's user identification under section 552.139 of the Government Code without the necessity of requesting a decision from this office. In Open Records Letter No. 2016-21830, this office issued the OAG a previous determination authorizing it to withhold photographs of its employees created specifically for use on identification badges under section 552.139(b)(3) of the Government Code without the necessity of requesting a decision from this office. Open Records Letter No. 2016-17399 is a previous determination issued to the OAG authorizing it to withhold the

the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 Exhibit B under section 552.101 in conjunction with the MPA.³

dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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.

³ 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. *See Occ. Code §§ 159.004, .005, .006; cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide general right of access to medical records from governmental body responding to a request for information under the Public Information Act).

Section 552.101 of the Government Code also encompasses section 562.052 of the Occupations Code, which provides the following:

A confidential record is privileged and a pharmacist may release a confidential record only to:

- (1) the patient or the patient's agent;
- (2) a practitioner or another pharmacist if, in the pharmacist's professional judgment, the release is necessary to protect the patient's health and well-being;
- (3) the [Texas Board of Pharmacy] or to a person or another state or federal agency authorized by law to receive the confidential record;
- (4) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);
- (5) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or
- (6) an insurance carrier or other third party payor authorized by the patient to receive the information.

Occ. Code § 562.052. Section 551.003(10) of the Occupations Code defines a confidential record for the purposes of section 562.052 as a "health-related record, including a patient medication record, prescription drug order, or medication order, that: (A) contains information that identifies an individual; and (B) is maintained by a pharmacy or pharmacist." *Id.* § 551.003(10); *see also id.* § 562.102. Upon review, we agree Exhibit C consists of confidential prescription records that are subject to section 562.052. Accordingly, the OAG must withhold Exhibit C under section 552.101 in conjunction with section 562.052.

In summary, the OAG must withhold Exhibit B under section 552.101 in conjunction with the MPA. The OAG must withhold Exhibit C under section 552.101 in conjunction with section 562.052 of the Occupations Code.

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 946615

Enc. Submitted documents

c: Requestor
(w/o enclosures)