



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 26, 2022

Ms. Victoria Jimenez  
Director of Legal Services  
Harris County Sheriff's Office  
1200 Baker Street, 2<sup>nd</sup> Floor  
Houston, Texas 77002

OR2022-21956

Dear Ms. Jimenez:

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# 962306 (HCSO File No. #22SO60027).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You state you will release basic information pursuant to section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the sheriff's office has not submitted information responsive to all the categories of information to which the requestor seeks access. Although you state the sheriff's office has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the sheriff's office to withhold any information that is substantially different from the types of information you submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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* 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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state the submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit C. Accordingly, the sheriff's office may withhold Exhibit C under section 552.108(a)(2) of the Government Code.<sup>1</sup> However, Exhibit D relates to an internal affairs investigation conducted by the sheriff's office. Accordingly, the sheriff's office may not withhold Exhibit D under section 552.108(a)(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. Section 552.101 encompasses information made confidential by statute, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. 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.

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<sup>1</sup> As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

*Id.* § 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.

Upon review, we find a portion of the remaining information, which we have marked, 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 sheriff's office must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated any portion of the remaining information consists of medical records for purposes of the MPA, and the sheriff's office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). The remaining information contains records made and maintained by emergency medical services personnel. Upon review, we find section 773.091 is applicable to the information we have marked. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the sheriff's office must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal

regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See Gov’t Code § 411.083.* Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. Additionally, because the laws that govern the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See ORD 565 at 10-12.* We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See Gov’t Code § 411.081(b)* (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find a portion of the remaining information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You state the submitted EINs relate directly to “the transfer of funds from Harris County to its employees and could potentially be used to access a secure [s]heriff’s [o]ffice website and employee deposit and retirement accounts.” Accordingly, the sheriff’s office must withhold all EINs in the remaining information section 552.136 of the Government Code.

In summary, the sheriff’s office may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. With the exception of the information subject to section 773.091(g), the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The sheriff’s office must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code. The sheriff’s office must withhold all EINs in the remaining information section 552.136 of the Government Code. The sheriff’s office must release the remaining information.

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,

Nick Ybarra  
Assistant Attorney General  
Open Records Division

NY/jxd

Ref: ID# 962306

Enc. Submitted documents

c: Requestor  
(w/o enclosures)