



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2022

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

OR2022-27748

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# 971188 (PIR No. R013039).

The Office of the Attorney General (the "OAG") received a request for all information pertaining to a stated claim number involving the requestor. The OAG states it will release most of the responsive information with redactions allowed by law, including redactions made in accordance with Open Records Letter No. 2011-18124 (2011).¹ The OAG claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the OAG states it notified the Dallas Police Department (the "department") of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). The OAG informs us the department does not object to disclosure of its information. We have considered the claimed exception and reviewed the submitted representative sample of information.²

¹ 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.

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.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 The OAG must release the remaining information to this requestor.⁴

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.

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).

⁴ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individuals request information concerning themselves). However, we note *Open Records Letter No. 2016-17399 (2016)* is a previous determination issued to the OAG authorizing it to withhold the 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.

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/jm

Ref: ID# 971188

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)