



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 27, 2022

Ms. Lisa Foster  
Assistant Records Supervisor  
McLennan County Sheriff's Office  
901 Washington Avenue  
Waco, Texas 76701

OR2022-29873

Dear Ms. Foster:

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# 975130.

The McLennan County Sheriff's Office (the "sheriff's office") received a request for information pertaining to named individual. 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 other statutes, such as 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). Section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a patient under section 159.002 of the MPA. *See* ORDs 487, 370, 343. Thus, the MPA is applicable only to records related to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain.

Upon review, we find some of the submitted information, which we marked, was created by nurses. The sheriff's office must withhold these documents under section 552.101 of the Government Code in conjunction with the MPA only if they were created under the supervision of a physician, or if they contain information taken directly from records created by or under the supervision of a physician. If the documents created by nurses were not created under the supervision of a physician, or if they do not contain information taken directly from records created by or under the supervision of a physician, they are not subject to the MPA and the sheriff's office may not withhold them under section 552.101 on that basis. However, we find none of the remaining information constitutes medical records subject to section 159.002. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with MPA. Accordingly, 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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/pt

Ref: ID# 975130

Enc. Submitted documents

c: Requestor  
(w/o enclosures)