



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2022

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

OR2022-32351

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# 979166 (PIR No. R013340).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a specified claim number involving the requestor's client. The OAG states it will release most of the responsive information with redactions allowed by law.¹ The OAG claims the submitted information is excepted from disclosure under section 552.101 of the

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). 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. In Open Records Letter No. 2011-18124 (2011), 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 (2016), 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.

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 information protected by other statutes, such as 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 agree Exhibit B constitutes mental health records the OAG must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.³

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.);

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 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.)

(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 of the Government Code in conjunction with section 562.052 of the Occupations Code.⁴

In summary, OAG must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The OAG must withhold Exhibit C under section 552.101 of the Government Code 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

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⁴ We note this ruling does not affect a patient's right of access to the patient's own confidential record from the pharmacist or pharmacy who provided services under the Texas Pharmacy Act, subtitle J of title 3 of the Occupations Code. *See* Occ. Code §§ 562.052, .102; *cf. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)