



To: Nestor Carbonell

From: Miriam S. Ramos, Deputy City Attorney for the City of Coral Gables

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding HIPPA

Date: July 17, 2015

Based on the research I have conducted, I agree with Craig's opinion that HIPPA records, in the possession of the Police Department, are not covered. According to the U.S. Department of Health & Human Services, "if a state agency is not a 'covered entity,' it is not required to comply with the HIPPA Privacy Rule and, thus any disclosure of information by the state agency pursuant to its state public records law would not be subject to the Privacy Rule." "Covered entity" is defined in 45 CFR 160.103 as: (1) a health plan, (2) a health care clearing house, or (3) a health care provider who transmits any health care information in electronic form in connection with a transaction covered by the chapter. The Code section further provides what is considered a "business associate" of a "covered entity" and a Police Department does not fall within that definition either.

Although Florida courts seem to not have addressed this issue directly. Several courts throughout the country have concluded that, "law enforcement agencies are not covered entities under HIPPA." See *United States v. Mathis*, 377 F.Supp.2d 640, 645 (M.D.Tenn.2005), *State v. Straehler*, 307 Wis.2d 360, 745 N.W.2d 431, 435 (Wis.App.2007).

This opinion is issued pursuant to Sec. 2-201(e)(1) and (8) of the City of Coral Gables Code, authorizing the City Attorney's Office to issue opinions and interpretations on behalf of the City.

I have calls into both Janet Lewis and Ivonne Duran. When I hear back from them I will let you know if they have any information of value to add to our analysis.

Herbello, Stephanie

From: Ramos, Miriam
Sent: Friday, July 31, 2015 4:38 PM
To: Herbello, Stephanie
Subject: FW: Legal Opinion re. HIPPA

Miriam S. Ramos, Esq.

Deputy City Attorney
City of Coral Gables
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From: Ramos, Miriam
Sent: Friday, July 17, 2015 3:35 PM
To: Carbonell, Nestor
Cc: Leen, Craig; Figueroa, Yaneris
Subject: RE: Legal Opinion re. HIPPA

Good afternoon Lt. Carbonell,

Based on the research I have conducted, I agree with Craig's opinion that HIPPA records, in the possession of the Police Department, are not covered. According to the U.S. Department of Health & Human Services, "if a state agency is not a 'covered entity,' it is not required to comply with the HIPPA Privacy Rule and, thus any disclosure of information

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Sincerely,

Miriam S. Ramos, Esq.

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From: Leen, Craig
Sent: Friday, July 17, 2015 11:17 AM
To: Carbonell, Nestor
Cc: Ramos, Miriam
Subject: Re: Legal Opinion

Nester, I do not believe that CGPD would generally be a covered entity under HIPAA where it receives medical information/records from third parties while performing its law enforcement function, but am not positive. I could see circumstances where the City provides the medical service (ie, Fire Rescue) and that those records could be covered. I am asking Miriam to look into this by researching HIPAA and to call Janet Lewis and Ivonne Duran from MDPD Police Legal.

Sent from my iPhone

On Jul 17, 2015, at 10:54 AM, Carbonell, Nestor <ncarbonell@coralgables.com> wrote:

Mr. Leen, as previously discussed:

The Internal Affairs Section request a legal opinion regarding the applicability of HIPPA privacy rules and the extent to which law enforcement officers are allowed to disclose personal health information obtained during the course of their official duties to third parties.

Question Presented: Specifically, under what circumstances would HIPPA prevent a law enforcement officer from disclosing an individual's personal health information (obtained during the performance of their lawful duties) to a third party - if at all?

I respectfully request the Legal Opinion be provided at the request of the Internal Affairs Section and that it remain CONFIDENTIAL pursuant to Ch.112.533(2)(a) until further advised.

Thank you,

A/ Lt. Nestor Joseph Carbonell III, Esq.
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Internal Affairs
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(305) 460-5493 (fax)
ncarbonell@coralgables.com
<image003.png>