



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 10, 1994

Mr. Terry Box
Sheriff
Collin County
4300 Community Boulevard
McKinney, Texas 75070

OR94-118

Dear Sheriff Box:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 24449.

The Collin County Sheriff's Office (the "county") received an open records request for all medical records the county holds pertaining to a particular jail inmate who died while in the county's custody. You contend that the medical records "may constitute evidence in the investigation [of the inmate's death] currently underway." Accordingly, you seek to withhold the requested information pursuant to the "law enforcement" exception of the Open Records Act. *See* Gov't Code § 552.108.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise section 552.101 because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* Government Code § 552.352. Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act, V.T.C.S. article 4495b, provides in pertinent part:

¹The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). Most of the records at issue clearly constitute "medical records" that are confidential under the Medical Practice Act. The county therefore must withhold these records pursuant to section 5.08(b) of article 4495b.²

A member of your staff has described one of the records at issue as a document created by someone other than a physician for the purpose of summarizing the circumstances surrounding the inmate's death. This record does not meet the criteria for a "medical record" and thus does not come under the protection of article 4495b. Therefore, we consider whether this document is excepted by section 552.108 of the Government Code.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133, 127 (1976).

In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court of civil appeals established the guidelines regarding the types of information contained in police files that normally constitute public information. In Open Records Decision No. 127 at 4, this office concluded that during the pendency of a criminal investigation, law enforcement agencies may withhold all information gathered during the course of the investigation under section 552.108 except for information which

²The requestor contends that because the individual to whom these records pertain is now deceased, the confidentiality provision in article 4495b is no longer applicable. This office has previously held that section 5.08(b) confidentiality does not lapse upon the death of the patient. See Attorney General Opinion JM-229 (1984); cf. Attorney General Opinion JM-851 (1988) (adult protective services records and Medicaid records pertaining to deceased individual).

is typically found on the front page of the offense report. We have enclosed a summary of Open Records Decision No. 127 that outlines the information that is open and closed to the public.

You assert that your investigation into the inmate's death is not yet complete and could conceivably uncover criminal wrongdoing. Based on these assertions, we conclude that section 552.108 is applicable to the "Death Summary," but only to the extent that it contains information similar to those types of information listed as being closed to the public in Open Records Decision No. 127. We have marked the information that you may withhold pursuant to section 552.108 during the pendency of your investigation; you must release the remaining portions of the "Death Summary" at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/RWP/rho

Ref.: ID# 24449

Enclosures: Attorney General Opinion JM-229
Summary of ORD No. 127
Submitted documents

cc: Mr. David May
Harte-Hanks Community Newspapers
801 E. Plano Parkway
Plano, Texas 75074
(w/o enclosures)

I. TYPES OF INFORMATION AVAILABLE TO THE PUBLIC

1. Arrestee's social security number, name, aliases, race, sex, age, occupation, address, police department identification number, and physical condition.
2. Offense for which suspect arrested.
3. Identification and description of complainant
4. Location of crime
5. Time of occurrence
6. Vehicle involved
7. Property involved
8. Detailed description of offense
9. Name of arresting officers
10. Date and time of arrest
11. Place of arrest
12. Details of arrest
13. Description of weather
14. Booking information
15. Court in which charge is filed
16. Notation of any release or transfer
17. Bonding information
18. Numbers for statistical purposes relating to modus operandi of those apprehended

II. TYPES OF INFORMATION PROTECTED BY SECTION 3(A)(8) DURING PENDENCY OF CRIMINAL INVESTIGATION

1. Identification and description of witnesses
2. Synopsis of confession
3. Officer's speculation as to suspect's guilt
4. Officer's view of witness credibility
5. Statements by informants
6. Ballistics reports
7. Fingerprint comparisons
8. Blood and other lab tests
9. Results of polygraph test
10. Refusal to take polygraph test
11. Paraffin test results
12. Spectrographic or other investigative reports
13. Personal History and Arrest Record, including
 - A. Identifying numbers (such as TDC numbers)
 - B. Physical description with emphasis on scars and tattoos
 - C. Marital status and relatives
 - D. Mug shots, palm prints, fingerprints, and signature
 - E. Chronological history of any arrests and disposition

See Open Records Decision No. 127 (1976).