



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 29, 1998

Mr. Miles K. Risley  
City Attorney  
City of Victoria  
Legal Department  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR98-1357

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115490.

The City of Victoria (the "city") received a request from the U.S. Consumer Product Safety Commission for a "copy of your report/s, on the death of a [specified] two-month old male." You assert the responsive information is confidential as it "contains a record of physician-patient communications" and as such is excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We now examine your argument that the information is excepted from disclosure under section 552.101 in conjunction with section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), which reads in part as follows:

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) 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.

We have reviewed the submitted information. We do not believe the records contain confidential physician-patient communications. As for subsection (b), it is not clear to this office that these records were "created or maintained by a physician." The records are a general offense report and a supplementary offense report both created by the police officers assigned to the investigation. Thus, we conclude that the MPA only applies to the records that have been created or maintained by a physician. *See* Open Records Decision No. 343 (1982) (MPA not applicable to hospital daily log not prepared by physician).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet L. Monteros  
Assistant Attorney General  
Open Records Division

JIM/alg

Ref.: ID# 115490

Enclosures: Submitted documents

cc: Ms. Jerusha J. Walker  
U.S. Consumer Product Safety Commission  
1114 Commerce Street, Room 216  
Dallas, Texas 75242  
(w/o enclosures)