



February 2, 2001

Sheriff Larry Lynch  
McLennan County  
219 North 6<sup>th</sup> Street  
Waco, Texas 76701

OR2001-0429

Dear Sheriff Lynch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144741.

The McLennan County Sheriff's Office (the "office") received a request for copies of all offense reports, incident reports, investigator notes, photographs and medical records pertaining to the incarceration and death of an inmate that occurred on September 26, 2000. You claim that the custodial death report, medical records, and criminal history information are excepted from public disclosure based on section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the Office of the Attorney General, section one of a custodial death report filed with this office is public information, but sections two through five of the report, as well as attachments to the report, are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Your office must release section one of the custodial death report. However, because sections two through five of the report and attachments thereto are deemed confidential under article 49.18(b), your office must not release the remaining portions of exhibit B to the requestor. Because article 49.18(b) is dispositive, we need not address the applicability of section 552.101 to any criminal history information.

You also assert that the medical records in exhibit C are excepted from public disclosure under 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." Section 552.101 encompasses confidentiality provisions. Some of the records at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

The medical records must be released to a person who has the written consent of the patient or other person authorized to act on the patient's behalf. Occ. Code § 159.004(5). The consent for release must be in writing and signed by the patient or a parent if the patient is a minor, and the consent must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code § 159.005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

We agree that exhibit C contains some medical records that are confidential under the MPA. For your convenience, we have marked the documents that are not medical records subject to the confidentiality provisions of the MPA and section 552.101 of the Government Code. The marked documents must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

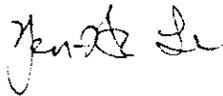
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rjb/seg

Ref: ID# 144741

Encl. Marked documents

cc: Ms. Jacqueline Thompson  
4319 Green Oak Drive  
Waco, Texas 76710  
(w/o enclosures)