



June 6, 2001

Mr. Jon P. McGough  
Assistant General Counsel  
University of North Texas  
Health Science Center at Fort Worth  
3500 Camp Bowie Boulevard  
Fort Worth, Texas 76107-2699

OR2001-2357

Dear Mr. McGough:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148052.

The University of North Texas Health Science Center at Fort Worth ("UNTHSC") received a request for information relating to autopsies conducted on inmates from the Federal Medical Center. You state that you have released some of the requested information. However, you seek to withhold the requested autopsy findings under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We begin by noting that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 . . . .

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<sup>1</sup>We assume that 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.

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed autopsy report. This report may only be withheld if it is confidential under other law or if it is excepted under section 552.108 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We first address your argument that the requested autopsy reports are confidential under section 671.013(a) of the Health and Safety Code. Section 671.013 provides:

(a) An autopsy report shall be released on request to an authorized person in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

(b) A person who receives information under Subsection (a) may disclose the information to others only to the extent consistent with the authorized purposes for which the information was obtained.

....

You argue that the requested autopsy reports are confidential because there is no evidence the requestor is an authorized person seeking the reports for purposes of determining the cause of death in relation to a workers' compensation or insurance claim. Thus, you appear to argue that section 671.013(a) implicitly grants confidentiality to autopsy reports when requested by any person other than an authorized person seeking the information for purposes of a workers' compensation or insurance claim. However, in order to fall under section 552.101 of the Government Code, a statute must explicitly state that information is confidential or require that information not be released to the public. *See Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987)*. We will not imply a confidentiality requirement from the structure of a statute. *See ORD 465 at 4-5*. While section 671.013(a) provides a specific right of access to autopsy reports for authorized individuals seeking the reports for purposes of determining the cause of death in relation to a workers' compensation or insurance claim, it does not specifically provide for the confidentiality of autopsy reports. Therefore, we conclude that section 671.013(a) of the Health and Safety Code is not a confidentiality provision for the purpose of section 552.101 of the Government Code. *See ORD Nos. 658, 478, 465; cf. Crim. Proc. Code art. 49.25, § 11 (autopsy report conducted by medical examiner is subject to required disclosure under the Public Information Act, except for photograph or x-ray of body, which is subject to disclosure only under subpoena or authority of other law, or if person died in custody of law enforcement)*. Thus, we find that you may not withhold the requested autopsy reports under section 671.013 of the Health and Safety Code.

We next address your contention that the requested autopsy reports are confidential under the Occupations Code and the Texas Rules of Evidence. *See In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at \*8 (Tex. Feb. 15, 2001) (providing that Rules of Evidence are “other law” for the purpose of section 552.022 of the Government Code). Section 159.002 of the Occupations Code provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

Similarly, Rule 509 of the Texas Rules of Evidence provides that confidential communications between a physician and patient as well as a physician’s records of the identity, diagnosis, evaluation, or treatment of a patient are privileged in a civil proceeding and protected from discovery.

Both the Rules of Evidence and the Occupations Code define a “patient” as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001; Tex. R. Evid. 509(a)(1). We do not believe that a deceased individual is a “patient” under section 159.001 of the Occupations Code or Rule of Evidence 509(a)(1). Section 159.002 of the Occupations Code and Rule of Evidence 509 protect only the medical records of people who were alive at the time the records were created. Therefore, you may not withhold the requested autopsy reports under either section 159.002 or Rule 509. Because you have not demonstrated, nor is it apparent, that the requested reports are confidential, we find you must release the reports in their entirety.

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 Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 148052

Enc: Submitted documents

c: Ms. Toni Heinzl  
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(w/o enclosures)