



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 13, 2002

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

OR2002-7147

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173710.

The Fort Bend County Sheriff's Department (the "department") received a request for the investigative report regarding the death of Willie Tillis. You state that some of the requested information has been released to the requestor. You claim, however, that the submitted information is excepted from disclosure under section 159.002 of the Occupations Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that some of the submitted documents appear to have been produced in response to grand jury subpoenas. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. See Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent that the submitted information was obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury, the information is in the custody of the department as agent of the grand jury and is not subject to disclosure under chapter 552. *Id.* at 4. To the extent, however, that the submitted information was not obtained by the department pursuant to a grand jury subpoena or at

the direction of the grand jury, the information is subject to disclosure under chapter 552 and must be released unless an exception to disclosure is demonstrated to be applicable. As we are unable to determine the extent to which the submitted information is subject to chapter 552, we address your exceptions to disclosure.

Next, we note that some of the submitted information is excepted under section 552.101 of the Government Code.<sup>1</sup> 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. This office has concluded that Part I of a custodial death report is public information in accordance with article 49.18(b) of the Code of Criminal Procedure. *See* Open Records Decision No. 521 (1989). Parts II through V of the report are not public information. *See id.* Similarly, documents compiled and attached to a custodial death report as attachments must be withheld. *See id.* at 7. The submitted information includes documents that were attached to a custodial death report. These documents, which we have marked, must be withheld under section 552.101 of the Government Code.

Section 552.101 encompasses section 773.091(b) of the Health and Safety Code, which provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). In this case, the submitted records include EMS records, and it does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply. Accordingly, the department must withhold the submitted EMS records, which we have marked, under section 552.101 of the Government Code, except for information required to be released under section 773.091(g).

Finally, we note that some of the remaining information constitutes 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:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

We have marked the information that is governed by the MPA. *See* Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). As the patient is deceased, the medical records may be released only on the signed consent of the deceased's personal representative. Occ. Code §§ 159.005(a)(5). That 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 §§ 159.004, .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).

To summarize, we conclude that to the extent the submitted information was obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury, the information is in the custody of the department as agent of the grand jury and is not subject to disclosure under chapter 552 as a record of the judiciary. To the extent, however, that the submitted information was not obtained by the department pursuant to a grand jury subpoena or at the direction of the grand jury the information is subject to disclosure under chapter 552 and must be released unless an exception to disclosure is demonstrated to be applicable. We have marked the attachments to a custodial death report and the EMS records that must be withheld under section 552.101. Finally, we have marked the information that is subject to the MPA and may be released only on the signed consent of the deceased's personal representative. The remaining submitted information 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 Department 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 173710

Enc: Marked documents

c: Ms. Mary Tillis  
364 Turtle Creek Drive  
Missouri City, Texas 77489  
(w/o enclosures)