



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2006

Mr. G. Cole Spainhour
Assistant County Attorney
Williamson County
405 MLK #7
Georgetown, Texas 78626

OR2006-02678

Dear Mr. Spainhour:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 244224.

The Williamson County Sheriff's Office (the "sheriff") received a request for all documents or videotapes related to the investigation of a named inmate's death while in custody, including the Texas Ranger's independent investigation. You inform us that some of the requested information has been released, but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit B contains a custodial death report. In 2003, the Office of the Attorney General (the "OAG") revised the format of a custodial death report. Previously, the report consisted of five sections. In Open Records Decision No. 521 at 5 (1989), we concluded that under article 49.18(b) of the Code of Criminal Procedure in conjunction with a directive issued by the OAG, section one of a custodial death report filed with this office was public information and must be released, but sections two through five of the report, as well as attachments to the report, were confidential. *See* Crim. Proc. Code 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). A custodial death report now consists of two pages and an attached summary of how the death occurred. The OAG has determined that the two-page report and summary must be released to the public;

however, any other documents submitted with the revised report are confidential under article 49.18 of the Code of Criminal Procedure.

You claim that a portion of the custodial death report is subject to the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Information subject to the MPA is generally confidential. *See* Occ. Code § 159.002 (b). Thus, in this instance, there would be a conflict of laws between the MPA and article 49.18. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). In this instance, article 49.18 is more specific than the general confidentiality provision in the MPA. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, the submitted custodial death report in Exhibit B, which we have marked, must be released without redactions pursuant to article 49.18 of the Code of Criminal Procedure.

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as the MPA. You claim that Exhibits B, C and D contain medical records, access to which is governed by the MPA. Section 159.002 of the Occupations Code provides in pertinent part:

(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.

Occ. Code § 159.002 (b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained

by a physician.” Open Records Decision No. 546 (1990). We have marked the information that consists of medical records of the decedent for purposes of the MPA and may be released only as provided by the MPA.

However, some of the information you have marked as medical records are bills generated by the sheriff or administrative records of the sheriff. Because you do not explain how these records are created or maintained by a physician, we find they are not subject to the MPA. You have also marked information in the investigative records of both the sheriff and the Texas Rangers as subject to the MPA. However, only information in the investigatory records taken directly from medical records is subject to the MPA. General statements or observations about a person’s health or condition in the investigative records are not subject to the MPA.

You also claim that the submitted documents contain information subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Section 552.117(a)(2) protects the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code.¹ Pursuant to section 552.117(a)(2), the sheriff must withhold the above-listed information of the employees that were licensed peace officers at the time this request was received. Pursuant to section 552.117(a)(1), the sheriff must withhold the same information for those employees that were not licensed peace officers at the time this request was received, but elected, prior to the receipt of this request, to keep such information confidential. We have marked the information in the submitted documents that is subject to section 552.117. Because our ruling on this issue is dispositive, we need not address your remaining argument.

We also note that the submitted documents contain a Texas driver’s license. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Thus, the sheriff must withhold the Texas driver’s license marked in the submitted documents.

Lastly, we note that the submitted information contains the social security number of a private citizen. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.

¹“Peace officer” is defined by article 2.12 of the Code of Criminal Procedure.

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

Therefore, the sheriff must withhold the social security number contained in the submitted information under section 552.147.³

In summary, we have marked the information that consists of medical records of the decedent for purposes of the MPA and may be released only as provided by the MPA. We have marked the information in the submitted documents that is subject to section 552.117. The sheriff must withhold the Texas driver's license marked in the submitted documents pursuant to section 552.130. The sheriff must withhold the social security number contained in the submitted information. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'José Vela III', with a long horizontal flourish extending to the right.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 244224

Enc. Submitted documents

c: Mr. Ben Trollinger
Williamson County Sun
P. O. Box 39
Georgetown, Texas 78626
(w/o enclosures)