



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2006

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2006-05413

Dear Ms. Lytle:

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# 249837.

The El Paso County Medical Examiner's Office (the "medical examiner") received a request for the entire investigation file pertaining to a named individual, including (1) the complete investigative report(s), (2) all related "photographs and videograph," (3) any and all witness statements, (4) any and all drawings or diagrams created and filed by the medical examiner, (5) any and all medical records and/or documentation, and (6) any and all autopsy reports. You state that the medical examiner will release some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a

photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25. Because neither exception to confidentiality applies to the submitted information in this instance, the submitted autopsy photograph is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with article 49.25, section 11. Accordingly, the medical examiner must withhold this photograph from disclosure.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in 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). 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). Medical records pertaining to a deceased patient may only be released upon the signed consent of the deceased's personal representative. *See id.* § 159.005(a)(5). Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the medical record information that is subject to the MPA. Absent the applicability of an MPA access provision, the medical examiner must withhold this information pursuant to the MPA.

We note, however, that the MPA defines a patient as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001. Based on this definition, a deceased individual cannot be a "patient" under section 159.001 of the MPA. Thus, section 159.002 protects only the medical records of people who were alive at the time the records were created. In this instance, some of the records at issue relate to a deceased individual and were created *after* the individual's death. Thus, because records created after

an individual's death do not constitute "record[s] of the identity, diagnosis, evaluation, or treatment of a patient by a physician," these records are not subject to the MPA and may not be withheld on that basis. *See* Occ. Code §159.002(b).

Finally, we address your claim that the originating telephone numbers of 9-1-1 callers contained in Attachment E are excepted under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency 9-1-1 district established in accordance with chapter 772, and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of El Paso to be part of an emergency communication district that was established under section 772.318.¹ Thus, based on your representations and our review, we determine that the originating telephone number and address in Attachment E are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

In summary, the medical examiner must withhold the submitted autopsy photograph in Attachment B under section 522.101 of the Government Code in conjunction with article 49.25, section 11 of the Texas Code of Criminal Procedure. The medical examiner must also withhold the marked medical records in Attachment C under section 552.101 in conjunction with the MPA. Finally, the medical examiner must withhold the originating telephone number and address contained in Attachment E under section 552.101 in conjunction with section 772.318 of the Texas Health and Safety Code. 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).

¹Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

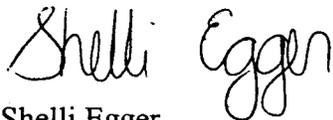
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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).

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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 249837

Enc. Submitted documents

c: Mr. Fred O. Haiman
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(w/o enclosures)