



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2006

Mr. John C. West
OIG General Counsel
Texas Department of Criminal Justice
P.O. Box 134084
Austin, Texas 78711

OR2006-06034

Dear Mr. West:

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# 251240.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the death of department employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The submitted information pertains to an internal investigation into death of a department employee. We note that section 552.108 is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section

552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). Although you assert that "it is possible that criminal charges could be identified that would lead to a criminal case being opened on this death, which criminal case would be directly related to this open administrative case," you have not stated that the information at issue pertains to an ongoing criminal investigation or prosecution. We further find you have not adequately explained how the release of this information would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have not met your burden under section 552.108(a)(1). Because you have failed to demonstrate the applicability of section 552.108, the department may not withhold the submitted information under section 552.108.

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 exception encompasses information made confidential by other statutes. The documents submitted by the department includes medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001 *et seq.* Section 159.002 of the MPA provides in part:

- (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.

Id. § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). When a patient is deceased, medical records may be released only on the signed consent of the deceased's personal representative. *See id.* §§ 159.005(a)(5). The consent in that instance 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. *See id.* §§ 159.004, .005. 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 records that are subject to the MPA. The department may only disclose these records in accordance with the access provisions of the MPA. Absent the applicability of an MPA access provision, the department must withhold these records pursuant to the MPA. *See* Open Records Decision No. 598 (1991).

We note that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department. *See* Gov't Code § 552.117(a)(3). We note that an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under this section. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). In addition, we note that because section 552.117(a)(3) deems social security numbers confidential in order to protect the privacy of living individuals, and not deceased persons, this aspect of section 552.117(a)(3) is purely personal and lapses at death. *See Moore*, 589 S.W.2d 489; *see also* Attorney General Opinions JM- 229 (1984); H-9: 7 (1976). Therefore, the decedent's social security number is not excepted from disclosure under section 552.117(a)(3). Furthermore, the requestor has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise excepted from disclosure to the public, because the information pertains to her. Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests).¹ Other information within the submitted documents must be withheld from disclosure under section 552.117(a)(3). We have marked this information accordingly.

Finally, we note that remaining information includes Texas license plate numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

¹ We note, however, that some of the information being released is confidential with respect to the general public. Thus, in the event the department receives another request for this information from someone other than the requestor or her authorized representative, the department must ask this office for a decision whether the information is subject to public disclosure.

Gov't Code § 552.130(a). Pursuant to section 552.130, the department must withhold the Texas license plate numbers that we have marked.

In summary, the medical records that we have marked may only be released in accordance with the MPA. The department must withhold the information we have marked under sections 552.117(a)(3) and 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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).

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 cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 251240

Enc. Submitted documents