



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2006

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2006-06461

Dear Ms. Reingold:

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# 251999.

The Galveston County Medical Examiner's Office (the "medical examiner") received a request for information regarding a specific autopsy. You inform us that most of the responsive information has been released to the requestor, but ask whether the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and reviewed the submitted information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Section 164.007(c) of the Occupations Code provides as follows:

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the [Texas Medical Board] (the "board) or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the [board] or its employees or agents involved in

discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the [board].

Occ. Code § 164.007(c). By its terms, section 164.007(c) makes information confidential when in the possession of the board, its employees, or agents. In this case, however, the information at issue consists of communications between the board and a licensed physician relating to a complaint against the physician that are in the possession of the medical examiner. *See* 22 TAC §§ 178.5-178.7 (providing for communications between board and physician regarding complaint against physician.). Although section 164.007 of the Occupations Code provides that confidential information in the possession of the board may be transferred in certain circumstances, you do not inform us, nor is it apparent from our review of the submitted information, that the medical examiner received the information from the board pursuant to any of the release provisions in section 164.007. *See* Occ. Code § 164.007(d), (f)-(h). *See also* 22 TAC § 179.3 (enumerating entities and persons to whom confidential complaint information may be released). Further, you do not assert, and the submitted documents do not reflect, that the medical examiner is holding these documents as an agent of the board. Accordingly, we conclude that section 164.007(c) does not make the information confidential in this instance, and it may not be withheld on this basis. As you make no other arguments against disclosure, the 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, 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/sdk

Ref: ID# 251999

Enc. Submitted documents

c: Mr. H. William Schneider
Rose & Matthews, P.C.
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(w/o enclosures)