



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2007

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2007-01113

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# 270142.

The Texas Department of Criminal Justice (the "department") received a request for information relating to the death of a named inmate. You state that the department will withhold social security numbers under section 552.147 of the Government Code.¹ You inform us that other responsive information, including autopsy and custodial death reports, will be released. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

¹Section 552.147 provides in part that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). Section 552.147(b) 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. We note that because this exception protects personal privacy, which is a personal right that lapses at death, the social security number of a deceased individual may not be withheld under section 552.147. See Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

Section 552.101 of the Government Code exempts 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 that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. 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.

Id. § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released on the signed consent of the deceased’s personal representative. *See* Occ. Code §§ 159.005(a)(5). Medical records must be released on receipt of signed, written consent, provided that the consent specifies (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* Occ. Code §§ 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 information that is confidential under the MPA. The department must not release that information unless it has authorization under the MPA to do so. *See* Open Records Decision No. 598 (1991).

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to information that is

made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked the information that is confidential under section 611.002 of the Health and Safety Code. Unless the requestor has a right of access to the marked information under sections 611.004 and 611.0045, it must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.134 of the Government Code encompasses information that relates to inmates of the department. This exception states that “[e]xcept as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.” Gov’t Code § 552.134(a). Section 552.029 of the Government Code provides that notwithstanding section 552.134, eight specified categories of “information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]” *Id.* § 552.029. These eight categories of information include “basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.” *Id.* § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We conclude that most of the remaining information at issue relates to an inmate of the department and is therefore subject to section 552.134. We note that although the inmate to whom the information pertains is deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. We also note that the information in question relates to the inmate’s death in custody and to an alleged crime involving the inmate. Therefore, basic information about that incident is subject to disclosure under section 552.029(8). The basic information that must be released under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of basic information, the department must withhold the information that we have marked under section 552.134.

With respect to the remaining information, we address your claims under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.,* Open Records Decision Nos. 531 (1989)

(release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue that the submitted documents contain security threat group or gang information, the release of which would tend to compromise institutional security regarding handling of offenders, divulge potential weaknesses in correctional facility operation, and place correctional facility staff, offenders, and members of the public in jeopardy. Having considered your arguments, we conclude that you have not explained how or why release of any of the remaining information would interfere with law enforcement or crime prevention. We therefore conclude that the department may not withhold any of the remaining information under section 552.108(b)(1).

You also raise section 552.108(b)(2), which excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). You assert that the release of information relating to unit operations, gang activities, and investigative techniques would compromise security measures and interfere with future investigations. However, you have not explained how or why these concerns implicate any of the remaining information. Moreover, section 552.108(b)(2) is only applicable to information pertaining to a concluded investigation that did not result in a conviction or a deferred adjudication. Although you state in your arguments that the information in question is related to a closed investigation, you indicate elsewhere that the information pertains to an open and active investigation. Having considered your arguments, we conclude that the department may not withhold any of the remaining information under section 552.108(b)(2).

Section 552.117(a)(3) of the Government Code 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 or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. In Open Records Letter No. 2005-1067 (2005), this office issued a previous determination that authorizes the department to withhold information under section 552.117(a)(3) without the necessity of requesting an attorney general decision.² We have marked information that the department must withhold under section 552.117(a)(3).

In summary: (1) the department must not release the marked information that is confidential under the MPA unless it has authorization under the MPA to do so; (2) the marked information that is confidential under section 611.002 of the Health and Safety Code must be withheld under section 552.101 of the Government Code, unless the requestor has a right of access to that information under sections 611.004 and 611.0045 of the Health and Safety Code; (3) except for the basic information that must be released under section 552.029(8) of the Government Code, the department must withhold the marked information that relates to the deceased inmate under section 552.134 of the Government Code; and (4) the department must withhold the information that we have marked under section 552.117(a)(3) of the Government Code. The rest of the submitted information must be released. As we are able to make these determinations, we need not address section 552.1175 of the Government Code.

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

²See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

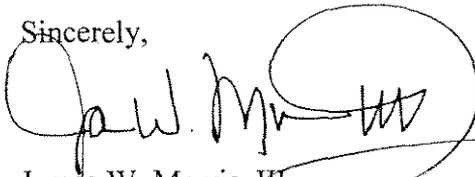
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 black ink, appearing to read "J.W. Morris III", is written over a horizontal line. The signature is enclosed within a hand-drawn circle.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jww

Ref: ID# 270142

Enc: Submitted documents

c: Ms. Christina Escalante
1103 Vasquez Street
Austin, Texas 78741
(w/o enclosures)