



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2007

Mr. Kent A. Brown
Assistant County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2007-06788

Dear Mr. Brown:

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# 279725.

The Nueces County Medical Examiner's Office (the "medical examiner") received a request for any and all documentation and information, including autopsy reports and photographs, regarding a specified individual. You claim that some of the requested information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information consists of medical records, access to which is governed by the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. 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 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). Medical records must be released upon the patient's 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. 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 medical examiner may only disclose these records in accordance with the access provisions of the MPA. Absent the applicability of an MPA access provision, the medical examiner must withhold these records pursuant to the MPA. *See* Open Records Decision No. 598 (1991).

You raise section 552.101 of the Government Code in conjunction with chapter 241 of the Health & Safety Code. Section 552.101 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. Chapter 241 is also known as the Texas Hospital Licensing Law. *See* Health & Safety Code §241.001. We note that sections 241.152 and 241.153 of the Health and Safety Code govern the disclosure of health care information by a hospital or by an agent or an employee of a hospital. *See id.* §§ 241.152 (written authorization for disclosure of health care information), 241.153 (disclosure without written authorization). You have not demonstrated, however, and it is not otherwise clear to this office, how or why any information held by the medical examiner would be subject to section 241.152, section 241.153, or any other provision of chapter 241 of the Health and Safety Code. We therefore conclude that you may not withhold any of the remaining information on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code. Section 773.091 provides as follows:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). This confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g). We have marked the information that consists of EMS records. Accordingly, the medical examiner must withhold this information under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for information subject to section 773.091(g), which must be released.

Section 552.101 also encompasses section 11 of article 49.25 of the Code of Criminal Procedure which 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 autopsy photographs and the attached CD, labeled as Exhibit C, are excepted from required public disclosure under section 11 of article 49.25 of the Code of Criminal Procedure. The medical examiner must withhold Exhibit C under section 552.101 of the Government Code.

In summary, absent the applicability of an MPA access provision, the medical examiner must withhold the medical records we have marked. The medical examiner must also withhold the EMS records we have marked under section 552.101 of the Government Code in

conjunction with section 773.091(b) of the Health and Safety Code, except for information subject to section 773.091(g), which must be released. Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. 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).

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).

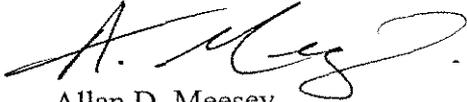
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/sdk

Ref: ID# 279725

Enc. Submitted documents

c: Ms. Kathryn McAdams
Keais Records Service
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Houston, Texas 77002
(w/o enclosures)