



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2009

Mr. Miles K. Risley
Senior Assistant City Attorney
City of Victoria- Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-01309

Dear Mr. Risley:

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# 334267.

The City of Victoria (the "city") received a request for information pertaining to the city police department's and justice of the peace's investigation into the cause of death of the requestor's wife. You state that some of the requested information will be released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 exception encompasses information that other statutes make confidential, including section 773.091 of the Health and Safety Code, which is applicable to emergency medical services records and provides in part:

(b) 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.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the

information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). Although you raise section 552.101 of the Government Code in conjunction with section 773.091, we note that the submitted information is a city police department investigation report and not emergency medical services records. Further, you do not inform us that any of the information contained in the submitted police report was taken from emergency medical services records. Therefore, we find that none of the submitted information falls within the scope of section 773.091. Therefore, the city may not withhold any of the submitted information under section 552.101 in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses 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:

(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). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). We note that section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a "patient" under section 159.002 of the MPA. Thus, section 159.002 is applicable only to the medical records of a person who was alive at the time of the creation of the records. You contend that a portion of the submitted information is confidential under the MPA. In this instance, the submitted information consists of a police investigation regarding a deceased individual. You do not explain, nor can we discern from our review, how any of the submitted information was obtained from medical records for the purposes of the MPA. Thus, you

have failed to demonstrate the applicability of the MPA to any of the submitted information. We therefore conclude that the city may not withhold any portion of the submitted information under section 552.101 on that basis.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to ... a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [.]” Gov’t Code § 552.130. We note that section 552.130 protects the privacy interest of the individual, and because the right of privacy is purely personal, it lapses upon death. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); see also Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Accordingly, the department may not withhold any information pertaining to the deceased individual under section 552.130. However, the city must withhold the Texas driver’s license number we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.¹

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

¹We note that the requestor in this instance has a special right of access to his own driver’s license number, which is being released. Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). Should the city receive another request for these same records from a person who would not have a special right of access to the private information, the city should resubmit this same information and request another ruling from this office. See *id.* §§ 552.301(a), .302.

Ref: ID# 334267

Enc. Submitted documents

cc: Requestor
(w/o enclosures)