



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2009

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033

OR2009-03288

Dear Ms. Dudley:

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# 337244.

The Cleburne Fire Department (the "department") received a request for information relating to an accident involving a named individual. You state that some of the requested information has been released. We understand you to claim that the rest of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. We note that the submitted information consists of records relating to emergency medical services ("EMS"). Section 773.091 of the Health and Safety Code is applicable to EMS information 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). Section 773.091 further provides, however, that

[t]he privilege of confidentiality under this section 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 note that some of the submitted EMS information concerns an individual who was determined to be deceased at the scene of the accident. The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note that other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates that the term refers to a living individual, we find that the term does not encompass the submitted information that concerns the deceased individual. That information, which we have marked, is therefore not confidential under section 773.091 of the Health and Safety Code and may not be withheld from the requestor on that basis under section 552.101 of the Government Code.

We find that the rest of the submitted information consists of EMS records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information specified by section 773.091(g), the remaining information is confidential under section 773.091 of the Health and Safety Code and may only be released in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094. We note that information encompassed by section 773.091 may be disclosed to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information." *Id.* §§ 773.092(e)(4), .093; *see* Open Records Decision No. 632 (1995). Section 773.093 provides that a consent for the release

of EMS information must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. *See* Health & Safety Code § 773.093(a). Therefore, except for the marked information that concerns the deceased individual, the department must withhold the submitted information under section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required written consent for release of the information under section 773.093.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which is applicable to medical records. 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.

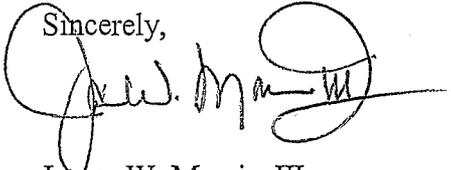
Occ. Code § 159.002(b)-(c). You contend that the MPA is applicable to the marked information concerning the deceased individual that is not confidential under section 773.091 of the Health and Safety Code. We note, however, that section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. *See id.* § 159.001(3). Under this definition, a deceased individual 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 diagnosis, evaluation, or treatment to which the records pertain. Therefore, the information that concerns the deceased individual is not confidential under the MPA and may not be withheld from the requestor on that basis.

In summary, except for the marked information that concerns the deceased individual, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the department receives the required written consent for release under section 773.093. The marked information must be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke at the end.

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

JWM/cc

Ref: ID# 337244

Enc: Submitted documents

c: Requestor
(w/o enclosures)