



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 21, 2009

Mr. Antonio Mendoza  
Assistant Criminal District Attorney  
Hidalgo County Courthouse  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2009-06971

Dear Mr. Mendoza:

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# 343827.

Hidalgo County (the "county") received a request for all information about the burial of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.115, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the county's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. The request reflects that it was received by the county on March 5, 2009. However, you did not submit arguments in support of the applicability of your raised exceptions by the fifteen day deadline. Consequently, we find the county failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). Because sections 552.101, 552.115, and 552.117 of the Government Code can provide compelling reasons to withhold information, we will address your arguments under these exceptions.

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. Section 552.101 encompasses information protected by other statutes. You indicate the hospital record submitted as Exhibit B-3 is confidential under the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which is encompassed by section 552.101 of the Government Code. Section 159.002 of the MPA provides in pertinent 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.

Occ. Code § 159.002(a), (b), (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 a result of a hospital stay, all the documents in the file referring 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 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 id.* §§ 159.004, .005. The medical records of a deceased patient may only be released on the signed written consent of the decedent’s personal representative. *See id.* §§ 159.005(a)(5). We have marked the medical records in the submitted information that are subject to the MPA. We note that the requestor appears to be the authorized representative of the deceased, and may have a right of access to his medical records that are subject to the MPA. *See id.* § 159.005(a)(2). The medical records we have marked may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

You seek to withhold Exhibits B-1 and B-2 under section 552.115 of the Government Code. Section 552.115(a) provides that “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Gov’t Code § 552.115(a). Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official, and not to information held by the county. *See* Open Records Decision No. 338 (1982). Therefore, none of the information in Exhibits B-1 and B-2 may be withheld under section 552.115 of the Government Code.

We note that section 552.130 of the Government Code is applicable to some of the remaining submitted information.<sup>1</sup> Section 552.130 excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license issued by an agency of this state. Gov’t Code § 552.130(a)(1). Exhibit B-4 consists of a copy of a Texas driver’s license. The county must withhold Exhibit B-4 under section 552.130 of the Government Code.<sup>2</sup>

In summary, the submitted medical records may only be released in accordance with the MPA. The county must withhold Exhibit B-4 under section 552.130 of the Government Code. The remaining 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

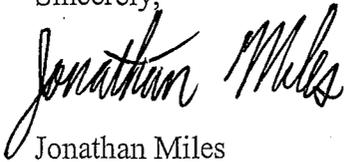
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>As our ruling is dispositive, we need not address your argument for this information.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 343827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)