



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2009

Mr. Erik Brown  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

Mr. John C. West  
General Counsel  
Texas Department of Criminal Justice  
Office of the Inspector General  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2009-08216

Dear Mr. Brown and 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# 346165 (OIG #OR-2009-000098).

The Texas Department of Criminal Justice (the "department") received a request for the investigation records related to a specified incident concerning an inmate and a copy of the department manual pertaining to policies and procedures regarding inmate management. The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs and separate responsive information that each seeks to withhold from disclosure. The OGC states that it will release a portion of the requested information and claims that the remaining responsive information it has submitted to this office for review is excepted from disclosure under section 552.134 of the Government Code. The OIG states that it will release basic information to the requestor with redactions pursuant to the previous determination issued by this office in Open Records

Letter No. 2005-01067 (2005).<sup>1</sup> The OIG also states that it is withholding social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> The OIG claims that portions of its submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the OGC informs us that it asked the requestor to clarify the request regarding the inmate management manual. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). The OGC also informs us that it has not received a response to its request for clarification. Accordingly, we find that the OGC has no obligation at this time to release any information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the clarification request, the OGC must seek a ruling from this office before withholding any responsive information from the requestor. *See* ORD 663 (10-business-day deadline tolled while governmental body awaits clarification).

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. The OIG claims a portion of its submitted information is confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs the public availability of medical records. 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.

---

<sup>1</sup>Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

<sup>2</sup>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. However, the requestor has a right of access to his client's social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

(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). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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). 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). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the 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 documents in the submitted information that constitute medical records, which involve the requestor's client. These records, however, must be withheld under the MPA, unless the OIG receives consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

The OGC and OIG both claim their submitted information is excepted from disclosure by section 552.134 of the Government Code. Section 552.134 relates to inmates of the department and provides in part:

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], 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 in part that

[n]otwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

...

(8) 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(1), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We find that section 552.134(a) is generally applicable to the remaining submitted information. However, the submitted information pertains to a use of force incident where the inmate suffered an injury. Therefore, the OIG and OGC must release basic information about this incident pursuant to subsections 552.029(1) and 552.029(8).<sup>3</sup> With the exception of the information that must be released pursuant to section 552.029, the department must withhold the remaining submitted information under section 552.134 of the Government Code.<sup>4</sup>

In summary, the OIG may only release the marked medical records in accordance with the MPA. With the exception of the basic information, the department must withhold the remaining submitted information under section 552.134 of the Government Code.

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](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

---

<sup>3</sup>Basic information 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.

<sup>4</sup>As our ruling is dispositive, we need not address either the OGC's or OIG's remaining arguments against disclosure of the information at issue.

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 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 346165

Enc. Submitted documents

c: Requestor  
(w/o enclosures)