



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2009

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-12698

Dear Ms. Fleming:

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# 354690.

The Texas Department of Criminal Justice (the "department") received a request for medical information pertaining to a deceased inmate, including information given to the parole board. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 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. Section 552.101 encompasses section 508.313 of the Government Code, which provides in part:

- (a) All information obtained and maintained [by the Texas Department of Criminal Justice], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the Texas Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Id. § 508.313(a). The department indicates the submitted information is maintained by the department's Parole Division and relates to an inmate that was subject to release on parole or release to mandatory supervision or executive clemency. After reviewing the department's arguments and the submitted information, we agree the submitted information is generally subject to section 508.313.

We note, however, that the submitted information is subject to the Medical Practices Act (the "MPA"), Occ. Code §§ 151.001-165.160. The MPA governs the disclosure of 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.

Id. § 159.002(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* 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).

Medical records must be released on 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. When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released upon the signed consent of the deceased's personal representative. *See id.* § 159.005(a)(5). Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). 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* ORD 598. We note that as the father of the deceased inmate whose medical records are at issue, the requestor may have a right of access to the submitted information under the MPA. *See* Occ. Code § 159.005(a)(2). Because the submitted information consists of medical records, it is generally confidential and may only be released as provided under the MPA. ORD 598. However, because the submitted information falls under both the MPA and section 508.313 of the Government Code, and because the access provisions of the MPA conflict with the confidentiality provision in section 508.313, we must determine which statute governs access to these records.

Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 508.313 of the Government Code generally applies to any type of record obtained and maintained by the department that is related to an inmate subject to release on parole, release to mandatory supervision, or executive clemency. However, the MPA is more specific because it is only applicable to medical records. Additionally, the MPA was enacted after the statutory predecessor to section 508.313 of the Government Code.¹ *See* Gov't Code § 311.026, *Avery v. State*, 963 S.W.2d 550 (Tex.App.—Houston [1st Dist.] 1997, no pet.) (specific statute prevailed over general statute based on specific nature of statutory authority and fact that specific statute was originally enacted later in time than general statute). Accordingly, we conclude that, notwithstanding the applicability of section 508.313 of the Government Code, the submitted information is subject to the MPA and may only be released in accordance with its provisions. *See* ORD 598. Thus, if the requestor provides the proper consent, the submitted information must be released to him. If he does not provide the proper consent, the submitted information must be withheld under section 552.101 in conjunction with the MPA.²

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.

¹*See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA), Act of June 21, 1947, 50th Leg., R.S., ch. 452, § 29, 1947 Tex. Gen. Laws 1049, 1057 (enacting statutory predecessor to Gov't Code § 508.313).

²As our ruling is dispositive, we need not address your argument under section 552.134 of the Government Code, except to note that the MPA prevails over the more general provisions of the Act. *See* ORD 598.

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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 354690

Enc. Submitted documents

c: Requestor
(w/o enclosures)