



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2010

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
Office of General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-02378

Dear Mr. Mu:

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# 367964.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named inmate. You claim 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. This exception encompasses information made confidential by other statutes. The submitted information contains medical records, which are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides, in relevant 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). This office has determined, 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 may be released only on receipt of signed, written consent, provided 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). In this instance, the requestor may be the authorized representative of the individual whose medical records are at issue. Thus, the medical records we have marked must be withheld, unless the department receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). The fingerprints at issue belong to the named former inmate. As noted above, the requestor may be the authorized representative of the named former inmate. Thus, if the department determines the requestor is the authorized representative of the inmate whose fingerprints are at issue, the requestor has a right of access to that information under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). In that instance, the department must release the submitted fingerprints, which we have marked, under section 560.002 of the Government Code. If, however, the department determines the requestor is not the authorized representative of the named inmate, the department must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You assert the remainder of the submitted information is subject to section 552.134 of the Government Code. Section 552.134 provides, in relevant part:

- (a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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). You state the remaining information concerns a former inmate confined in a facility operated by the department. You state section 552.029 of the

Government Code does not apply to the remainder of the information. Thus, we agree the remaining information is subject to section 552.134 of the Government Code. Therefore, the department must withhold the remaining information under section 552.134 of the Government Code.

In summary, the marked medical records must be withheld unless the department receives written consent for release of those records that complies with the MPA. If the department determines the requestor is not the authorized representative of the named inmate, the department must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the remaining 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 367964

Enc. Submitted documents

c: Requestor
(w/o enclosures)