



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2010

~~Mr. John C. West~~
General Counsel
TDCJ - Office of the Inspector General
4616 West Howard Lane, Suite 250
Austin, Texas 78728

OR2010-09624

Dear 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# 384743.

The Texas Department of Criminal Justice's (the "department's") Office of the Inspector General (the "OIG") received a request for information pertaining to the death of a named inmate. You state that you have released some information to the requestor with certain addresses, telephone numbers, social security numbers, and personal family information withheld pursuant to sections 552.117, 552.1175, and 552.147(b) of the Government Code, as well as the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ You claim that the submitted information in Exhibit C is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your assertion that Exhibit C contains confidential medical records subject to the Medical Practice Act (the "MPA"). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either

¹We note 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. Further, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act.

constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by statute, such as the MPA, subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in relevant 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). This office has determined in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act, such as sections 552.108 and 552.134 of the Government Code. *See* Open Records Decision No. 598 (1991). This office has concluded 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* We have further found 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). We note 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* Occ. Code § 159.001(3). Based on this definition, a deceased person is not a “patient” under section 159.002 of the MPA. Thus, the MPA is applicable only to records relating to a person who was alive at the time of the diagnosis, evaluation, or treatment to which the records pertain.

Medical records must be released on receipt of signed, written consent, provided 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). 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). Upon review, we agree portions of Exhibit C consist of medical records. Accordingly, these medical records, which we have marked, may only be released in accordance with the MPA.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records and provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; ORD 565. We have marked mental health records that the OIG must withhold under section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code. *See Health and Safety Code § 611.004(a)(5)* (professional may disclose confidential information to patient’s personal representative if patient is deceased).

You raise section 552.134 of the Government Code for the remainder of Exhibit C. Section 552.134 of the Government Code encompasses information relating to inmates of the department and states:

[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, however, 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:

...

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

You state the remainder of Exhibit C pertains to a department inmate and is therefore subject to section 552.134. We note that although the inmate to whom the remaining information pertains is deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. Upon review, we find section 552.134 is generally applicable to the remainder of Exhibit C. We note, however, that the information in question is related to the death of an inmate in custody. As you acknowledge, basic information about this incident is subject to disclosure under section 552.029(8). 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. Thus, with the exception of the basic information, which you state will be released, the OIG must withhold the remainder of Exhibit C under section 552.134.²

In summary, the OIG may only release the medical records we have marked in accordance with the MPA. The mental health records we have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. With the exception of basic information, which must be released, the OIG must withhold the remainder of Exhibit C 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

²As our ruling under section 552.134 of the Government Code is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 384743

Enc. Submitted documents

c: Requestor
(w/o enclosures)