



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2010

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County Attorney
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-15160

Dear Ms. Monteros:

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# 395677 (CA-OP-10-303).

The El Paso Medical Examiner's Office (the "medical examiner") received a request for information pertaining to a named individual.¹ You state the medical examiner released some information to the requestor. You claim portions of the submitted information are exempted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 other statutes make confidential, such as section 11 of article 49.25 of the Code of Criminal Procedure, which governs the disclosure of autopsy photographs. Section 11 provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the

¹You inform us the medical examiner requested and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Although you also raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. You state neither of the statutory exceptions to confidentiality provided in section 11 are applicable in this instance. Therefore, the medical examiner must withhold the autopsy photographs submitted as Attachment D under section 552.101 in conjunction with section 11 of article 49.25.

Attachment B includes a CR-3 accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the medical examiner with the required information. Accordingly, the medical examiner must withhold the CR-3 report under section 552.101 in conjunction with section 550.065(b).

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in 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.

Id. § 159.002(a)-(c). This office has found when a file is created as the result of a hospital stay, all documents in the file relating 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).

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. Occ. Code § 159.005(a)(5). 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. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *Id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Attachment G consists of medical records the medical examiner may only release in accordance with the MPA.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which makes confidential EMS records. Section 773.091 provides provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-773.094. We note this information may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” *Id.* § 773.092(e)(4). When the patient is deceased, the patient’s personal representative may consent to the release of the patient’s records. *Id.* § 773.093(a); *see also* Open Records Decision No. 632 (1995) (defining “personal representative” for purposes of section 773.093 of the Health and Safety Code). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (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. Health & Safety Code § 773.093(a). Thus, except for the information specified by section 773.091(g), which you state will be released, the medical examiner must withhold the EMS records you submitted as Attachment C under section 552.101 in conjunction with section 773.091(b), unless the deceased individual’s personal representative provides the medical examiner with written consent that meets the requirements of section 773.093(a). *See id.* §§ 773.092, .093; ORD 632.

You assert Attachment E is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. Although you state Attachment E pertains to a pending incident that has not received a final disposition by the appropriate court of law, you have not provided us with a representation from the law enforcement agency with a law enforcement interest in Attachment E that it wishes to withhold the information at issue. Accordingly, the medical examiner may not withhold Attachment E under section 552.108(a)(1).

Lastly, you seek to withhold a copy of a Texas driver’s license under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Gov’t

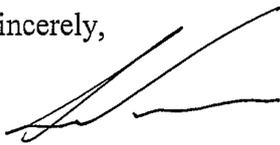
Code § 552.130. The medical examiner must withhold the copy of the Texas driver's license you submitted as Attachment F and the additional Texas motor vehicle record information we marked in Attachment E under section 552.130.³

In summary, the medical examiner must withhold Attachment D under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure and Attachment B under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The medical examiner may only release Attachment G in accordance with the MPA. Except as specified by section 773.091(g) of the Health and Safety Code, the medical examiner must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, unless the deceased individual's personal representative provides the medical examiner with written consent that meets the requirements of section 773.093(a) of the Health and Safety Code. The medical examiner must withhold Attachment F and the Texas motor vehicle record information we marked in Attachment E under section 552.130 of the Government Code. The medical examiner must release the remaining information.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a copy of a Texas driver's license and a license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 395677

Enc. Submitted documents

c: Requestor
(w/o enclosures)