



ATTORNEY GENERAL OF TEXAS
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October 22, 2010

Mr. James Mu
Assistant General Counsel
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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

OR2010-16076

Dear Mr. Mu 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# 397688 (OIG ORR File # 2010-00181).

The Texas Department of Criminal Justice (the "department") received a request for a complete version of the Prison Inmate Handbook, a full version of the Inmate Grievance Form, instructions for the filing of the grievance form, a copy of any and all video tapes of the area of the prison where a named inmate was held after he was injured, and a copy of any reports relating to the inmate's injury. The department's Office of the General Counsel ("OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs and separate documents that each seeks to withhold from disclosure. The OGC and the OIG each state a portion of the responsive information has been released. The OGC claims the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG states it is withholding certain addresses, telephone

numbers, social security numbers, and personal family information pursuant to sections 552.117 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 The OIG claims the information it has submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions claimed 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 information made confidential by statute, such as the Medical Practice Act ("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* Occ. Code §§ 159.002, .004; ORD 598. 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

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.

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).

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 find portions of the submitted information constitute medical records, which we have marked. Accordingly, the marked medical records may only be released in accordance with the MPA.

Both the OGC and the OIG raise section 552.134 of the Government Code for the remaining information. Section 552.134 encompasses information relating to inmates of the department and states, 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). Section 552.029 of the Government Code provides, however:

[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. Although the inmate to whom the remaining information pertains is

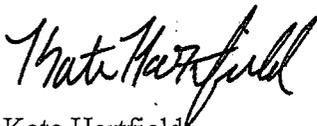
deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. Thus, we find section 552.134 is generally applicable to the remaining information. We note, however, a portion of the submitted information pertains to an injury suffered by this inmate. The information pertaining to the nature of the inmate's injury must be released under section 552.029(1). *See id.* We also note some of the submitted information is related to the death of an inmate in custody. Basic information about this incident is subject to disclosure under section 552.029(8). *See id.* 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. Therefore, with the exception of the information that must be released under section 552.029, the remaining information must be withheld under section 552.134 of the Government Code.

In summary, the marked medical records may be released only in accordance with the MPA. With the exception of the information subject to section 552.029 of the Government Code, which must be released, the remaining information must be withheld pursuant to section 552.134 of the Government Code.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.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

²As our ruling is dispositive, we need not address the remaining arguments against disclosure, except to note basic information generally may not be withheld under section 552.108. *See* Gov't Code § 552.108(c).

Ref: ID# 397688

Enc. Submitted documents

c: Requestor
(w/o enclosures)