



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2010

Ms. Diana Spiller
Public Information Coordinator
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711

OR2010-18147

Dear Ms. Spiller:

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# 401777.

The Texas Commission on Jail Standards (the "commission") received a request for information pertaining to the death of a named individual. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ You indicate you have notified the San Patricio County Jail of the request. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that some of the submitted information is not responsive to the instant requests. The requests seek information related to the death of a named individual. You have submitted information, which we have marked, that does not pertain to the named individual. This ruling does not address the public availability of any information that is not

¹Although you claim section 552.117 for portions of the submitted information, section 552.1175 is the proper exception to raise in this instance because the commission does not hold the information at issue in an employment capacity.

responsive to the request, and the commission need not release that information in response to the request.

You raise section 552.101 of the Government Code for Exhibits A, B, C, and D. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 773.091 of the Health and Safety Code is applicable to certain information related to the provision of emergency medical services ("EMS"). Section 773.091(b) of the Health and Safety Code provides as follows:

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.

Health & Safety Code § 773.091(b). You assert the EMS record submitted as Exhibit C is confidential under section 773.091; however, we note the information reveals the individual concerned was deceased when EMS personnel arrived. The term "patient" is not defined for the purposes of section 773.091 of the Health and Safety Code. When a word used in a statute is not defined and that word is "connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art." Gov't Code § 312.002; *see also Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 485 (Tex. 1998). Taber's Cyclopedic Medical Dictionary defines "patient" as "one who is sick with, or being treated for, an illness or injury; [or] . . . an individual receiving medical care." Taber's Cyclopedic Medical Dictionary 1446 (17th ed. 1989). We also note other statutes dealing with medically related professions generally define patient as an individual who consults a health care professional. *See* Health & Safety Code § 611.001 (mental health records), Occ. Code §§ 159.001 (physician records), 201.401 (chiropractic records), 202.401 (podiatric records), 258.101 (dental records). Thus, because the generally accepted medical definition of patient indicates that the term refers to a living individual, we find the term does not encompass information that concerns the deceased individual. Accordingly, we conclude section 773.091 of the Health and Safety Code is not applicable to the submitted EMS record submitted as Exhibit C, and the commission may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code, which governs access to medical records. Section 159.002 of the Occupations Code provides in pertinent 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 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 upon the patient's signed, written consent, provided that 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. Occ. Code §§ 159.004, .005. We note the medical records in Exhibit B relate to a patient who is now deceased. 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). 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). Upon review, we find the responsive information in Exhibit B constitutes confidential medical records that may only be released in accordance with the MPA.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. The doctrine of common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We note that privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589

²As our ruling for this information is dispositive, we do not address your remaining argument against its disclosure.

S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). In this instance, most of the information at issue pertains to a deceased individual and does not implicate the privacy interest of any living individual. Accordingly, most of the information you have indicated in Exhibits A and D is not protected by common-law privacy and may not be withheld on that basis under section 552.101. However, we find the information we have marked in Exhibit D pertains to living individuals and is highly intimate or embarrassing and of no legitimate public interest. Therefore, the information we have marked in Exhibit D must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code[.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

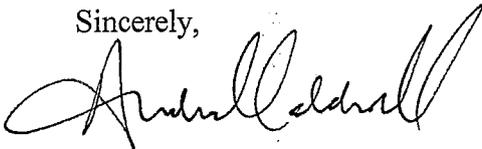
Gov't Code § 552.1175(a)-(b). You have marked home addresses and telephone numbers in Exhibit D that you state belong to Nueces County corrections officers. Thus, to the extent these individuals are peace officers under article 2.12 of the Texas Code of Criminal Procedure or county jailers under section 1701.001 of the Occupations Code, the commission must withhold the marked information under section 552.1175 if the individuals elect to restrict access to the information in accordance with section 552.1175(b).

In summary, the responsive information in Exhibit B constitutes confidential medical records that may only be released in accordance with the MPA. The commission must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information you have marked in Exhibit D relates to peace officers under article 2.12 of the Texas Code of Criminal Procedure or county jailers under section 1701.001 of the Occupations Code, the commission must withhold the marked information under section 552.1175 of the Government Code if the individuals elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code. The remaining information must be released.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 401777

Enc. Submitted documents

c: Requestor
(w/o enclosures)