



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

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Mr. John C. West
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OR2010-18813

Dear Ms. Towe 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# 403162.

The Texas Department of Criminal Justice (the “department”) received a request for all records pertaining to a named deceased individual. The department’s Office of the Inspector General (the “OIG”) received the above request as well as a request for all medical records for the deceased individual. The department’s Office of the General Counsel (the “OGC”) and the OIG have submitted separate briefs, as well as separate responsive documents each seeks to withhold from disclosure. Both the OIG and the OGC indicate they will provide some responsive information to the requestors, including the responsive Custodial Death Report. The OIG claims the information it submitted is excepted under sections 552.101, 552.108, and 552.134 of the Government Code. The OGC claims the information it submitted is excepted under sections 552.101, 552.115, and 552.134 of the

Government Code. We have considered the claimed exceptions 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 the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides 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). 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; Open Records Decision No. 598 (1991). When a file is created as the result of a hospital stay, all the 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). 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). Under this definition, a deceased person cannot be a "patient" under section 159.002 of the MPA.

Medical records must be released on 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. 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. *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). Although the OGC claims portions of its submitted information are subject to the MPA, no portion of the records submitted by the OGC pertains to the identity, diagnosis, evaluation, or treatment of the named individual while she was living. Thus, the OGC's records do not pertain to a

“patient” as that term is defined in the MPA and are not subject to its provisions. *See* Occ. Code § 159.001(3). However, upon review, we agree that some of the records submitted by the OIG are medical records, access to which is governed by the MPA. We have marked the medical records accordingly. The OIG states neither requestor has provided a written release for these records that complies with the MPA. In the absence of a proper authorization for release, these records must be withheld from the requestors pursuant to section 552.101 of the Government Code in conjunction with the MPA.¹ However, the OIG must release the marked medical records to a requestor who provides proper consent in accordance with the MPA. *See* ORD 598 at 5 (statutory predecessor to MPA generally prevails over exceptions in statutory predecessor to the Act).

Both the OIG and the OGC raise section 552.134 of the Government Code for the remaining information at issue. Section 552.134 relates to inmates of the department and provides in relevant part:

(a) Except 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 552.134 is explicitly made subject to section 552.029, which provides in relevant part:

Notwithstanding Section 508.313 or 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). Upon review, we agree that the remaining information submitted by the OIG and all information submitted by the OGC pertains to a former inmate confined in a facility operated by the department. However, portions of this information pertains to the death of an inmate while in custody. Consequently, both the OIG and the OGC must release basic information about the named individual's death pursuant to section 552.029. Basic information includes the time and place of the incident, names of inmates and department

¹As our ruling is dispositive, we need not address the remaining arguments against the disclosure of this information.

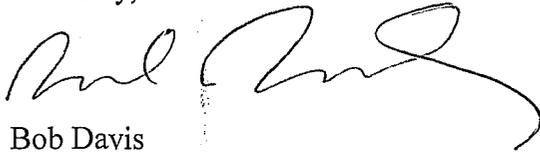
officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The OIG and the OGC must withhold the remaining submitted information under section 552.134 of the Government Code.²

In summary, the marked medical records may only be released in accordance with the MPA. With the exception of basic information about the named individual's death in custody that must be released, the OGC and the OIG 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 403162

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against the disclosure of this information.