



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2011

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 West Howard Lane, Suite 250  
Austin, Texas 78728

OR2011-00640

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# 405651 (OIG #OR-2010-00230).

The Texas Department of Criminal Justice's (the "department") Office of Inspector General (the "OIG") received a request for records pertaining to a named inmate. You state the OIG will provide some of the requested information to the requestor, with certain information redacted pursuant to section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim 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

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<sup>1</sup>Open Records Letter No. 2005-01067 (2005) 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.

Code § 552.101. Section 552.101 encompasses information made confidential by statute. The submitted information contains medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies the (1) information to be covered by the release, (2) reasons or purposes for the release, and (3) person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. 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). We have marked medical records in the submitted information that may be released only in accordance with the MPA. *See* ORD 598.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. The submitted information includes information acquired from a polygraph examination of the requestor's client, which we have marked. We note the department has the discretion to release this information pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph

examinees). Otherwise, the department must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.134 of the Government Code relates to information about inmates and former inmates of the department. This exception 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:

[n]otwithstanding [s]ection 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 the remaining information is generally subject to section 552.134. We note, however, the information at issue pertains to incidents involving alleged crimes involving the inmate. Under section 552.029, basic information regarding alleged crimes involving the inmate is subject to required disclosure. As such, the department must release basic information regarding the alleged crimes involving the inmate pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and department 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 department must withhold the remaining information under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure except to note basic information under section 552.029(8) corresponds to basic front-page information under section 552.108(c) of the Government Code. *See id.* § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

In summary, the department may only release the marked medical records in accordance with the MPA. The polygraph information we have marked is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, but the department has the discretion to release this information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. Except for basic information regarding the alleged crimes involving the inmate, which must be released, the department 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](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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 405651

Enc. Submitted documents

c: Requestor  
(w/o enclosures)