



ATTORNEY GENERAL OF TEXAS
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January 28, 2011

Ms. Charlotte A. Towe
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Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
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OR2011-01525

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# 407487.

The Texas Department of Criminal Justice (the "department") received a request for records, including photographs and video recordings, related to an assault involving the requestor. The department's Office of the General Counsel (the "OGC") and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate responsive records each seeks to withhold from disclosure. The OGC states some of the requested information either has been or will be released to the requestor. The OIG states some of the requested information either has been or will be released with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ The

¹Open 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.

OIG also states it is withholding social security numbers under section 552.147(b) of the Government Code.² The OGC claims the information it submitted is excepted under section 552.134 of the Government Code. The OIG claims the information it submitted is excepted under sections 552.101 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. This exception encompasses information other statutes make confidential. Medical records are confidential under 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; 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). We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990).

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 (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. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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 agree some of the records submitted by the OIG are medical records, access to which is governed by the MPA. We have marked medical records that pertain to the requestor. The OIG states the requestor has not 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 requestor pursuant to section 552.101 in conjunction with the MPA. However, the OIG must release the marked medical records to the requestor if she 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).

Section 552.134 of the Government Code 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 exempted 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 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:

...

(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 find the remaining information submitted by the OIG and all information submitted by the OGC pertain to an inmate confined in a facility operated by the department. Thus, we conclude section 552.134(a) is generally applicable to this information. We note, however, the information at issue pertains to an incident involving the use of force and an alleged crime of assault involving an inmate during his confinement. Consequently, both the OIG and the OGC must release basic information regarding these incidents. *See id.* § 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 OIG and the OGC must withhold the remaining submitted information under section 552.134 of the Government Code.³

In summary, the marked medical records may only be released in accordance with the MPA. With the exception of basic information about the use of force and alleged assault that must be released pursuant to section 552.029 of the Government Code, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 407487

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive for this information, we do not address the OIG's remaining claims.