



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2011

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

OR2011-05369

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# 414831.

The Texas Department of Criminal Justice (the "department") received a request for the personnel file of a former department employee, including "any write-ups, disciplinary actions and reason for leaving." The department's Office of the Inspector General (the "OIG") has submitted correspondence to this office. You state the OIG will redact information under section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).¹ You also state the

¹Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a) of the Government Code). Further, section 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. *See* Gov't Code § 552.147(b).

OIG has released some information to the requestor.² The OIG claims some or all of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains medical records which are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code.³ 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).

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 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

²Although the OIG states it will release "a copy of the autopsy order[.]" we note the submitted information does not involve a death.

³Section 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.

of the submitted records are medical records, access to which is governed by the MPA. We have marked these medical records which may only be released pursuant to the MPA.⁴

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 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 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 . . . an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). The OIG claims the remaining submitted information consists of information about department inmates for purposes of section 552.134. However, we note most of the remaining information pertains to an investigation of department employees regarding the use of force. Such information does not constitute "information about an inmate" for purposes of section 552.134, and thus may not be withheld in its entirety under section 552.134. The remaining records, however, include inmate-identifying information. This information is generally subject to section 552.134. However, basic information regarding an incident involving the use of force is subject to required disclosure pursuant to section 552.029. Basic information includes the time and place of the incident, the names of inmates and 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, we conclude the identities of the inmates in the submitted use of force inquiry must be released pursuant to section 552.029. We find section 552.029 is not applicable to

⁴As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure for this information.

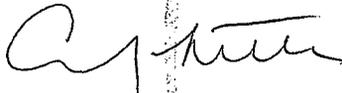
the remaining inmate-identifying information. Consequently, the department must withhold the information we have marked under section 552.134 of the Government Code.⁵

In summary, the medical records we have marked may only be released pursuant to the MPA. The OIG must withhold the information we have marked under section 552.134 of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/em

Ref: ID# 414831

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure for this information.