



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2011

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

OR2011-07085

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# 418084.

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for all information concerning the death of a named department inmate. You state you have released the Custodial Death Report, medical examiner's report, and most of the Criminal Case Information Worksheet from the responsive OIG case file. You claim the remaining portions of case file number 2011.00219 are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 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 Code § 552.101. This exception encompasses information other statutes make confidential. You claim a portion of the submitted information is confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs the public availability of medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(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. 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. *See Open Records Decision Nos.* 487 (1987), 370 (1983), 343 (1982). Thus, the MPA is applicable only to records relating to a person who was alive at the time of diagnosis, evaluation or treatment to which the records pertain.

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 ORD 598*. 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. 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). 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 documents in the submitted case file that constitute medical records. The OIG must withhold these records under section 552.101 of the Government Code in conjunction with the MPA, unless the OIG receives consent for release of those records that complies with sections 159.004 and 159.005(a)(5) of the MPA.

The OIG claims the remaining portions of the submitted case file are excepted under section 552.134(a) of the Government Code, which relates to inmates of the department and provides:

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). We find the remaining information pertains to an individual confined as an inmate in a facility operated by the department; therefore, we conclude section 552.134(a) is applicable to this information. We note, however, some of this information pertains to the named inmate's death in custody. Therefore, the OIG must release basic information about the inmate's death 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. Therefore, with the exception of basic information, the OIG must withhold the remaining information in the submitted case file pursuant to section 552.134(a) of the Government Code.¹

In summary, the OIG must withhold the medical records we have marked in the submitted case file under section 552.101 of the Government Code in conjunction with the MPA, unless the OIG receives consent for release of those records that complies with sections 159.004 and 159.005(a)(5) of the MPA. With the exception of basic information, the OIG must withhold the remaining information pursuant to section 552.134(a) 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.

¹As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure.

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/eeg

Ref: ID# 418084

Enc. Submitted documents

c: Requestor
(w/o enclosures)