



ATTORNEY GENERAL OF TEXAS
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August 30, 2011

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Mr. John C. West
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OR2011-12508

Dear Ms. Fleming 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# 428403.

The Texas Department of Criminal Justice (the "department") received two requests for information pertaining to a named deceased inmate. The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate responsive documents that each seeks to withhold from disclosure. The OGC states it has released or will release some of its responsive information, but claims the information it submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. The OIG indicates it will provide some of its responsive information to the requestors with a social security number redacted pursuant to section 552.147(b) of the Government Code and the previous determination issued to the

department in Open Records Letter No. 2005-01067 (2005).¹ The OIG claims the information it has submitted is excepted from disclosure under sections 552.101, 552.102, 552.108, 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. The OGC and the OIG both claim portions of their submitted information are 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. Section 159.002 of the MPA provides in pertinent 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. We have also found that 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. *See Open Records Decision Nos.* 487 (1987), 370 (1983), 343

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 the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act.

(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 information that constitute medical records. The department must withhold these records under the MPA, unless the department receives consent for release of those records that complies with sections 159.004 and 159.005(a)(5) of the MPA.²

Section 552.101 of the Government Code also encompasses chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* ORD 565. A portion of the remaining information constitutes mental health records of the deceased inmate. Therefore, the department may only release these mental health records, which we have marked, in accordance with sections 611.004 and 611.0045. *See* Health & Safety Code § 611.004(a)(5) (professional may disclose confidential information to patient's personal representative if patient is deceased).

The OGC and the OIG claim the remaining information is 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

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

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 submitted information pertains to the deceased inmate; therefore, we conclude section 552.134(a) is generally applicable to this information. We note, however, some of the remaining submitted information pertains to alleged crimes involving the named inmate and the named inmate's death in custody. Therefore, the OGC and OIG must release basic information about the alleged crimes and 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 department must withhold the remaining information pursuant to section 552.134(a) of the Government Code.³

In summary, the department must withhold the medical records we have marked under the MPA, unless the department receives consent for release of those records that complies with sections 159.004 and 159.005(a)(5) of the MPA. The mental health records we have marked in the remaining information are confidential under section 611.002 of the Health and Safety Code and may only be released in accordance with sections 611.004 and 611.0045. With the exception of basic information, the department must withhold the remaining information pursuant to section 552.134(a) of the Government Code.

³As our ruling under section 552.134 of the Government Code is dispositive, we do not address the OGC's or OIG's remaining arguments against disclosure of this information, except to note that basic information under section 552.029(8) corresponds to basic front-page information under section 552.108(c) of the Government Code. *See* Gov't Code 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 428403

Enc. Submitted documents

c: Requestor
(w/o enclosures)