



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2011

Mr. James Mu
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Texas Department of Criminal Justice
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Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
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OR2011-13356

Dear Mr. Mu 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# 430059.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the requestor's client, a named inmate. The department's Office of General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate correspondence to this office, as well as separate responsive records each seeks to withhold from disclosure. The OIG states it will release some of the responsive information to the requestor. However, the OIG states it will withhold certain addresses, telephone numbers, social security numbers, and personal family information pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous

determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ The OGC claims its submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG claims its submitted information is excepted 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 OIG claims 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.* 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). Medical records must be released upon the patient’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) 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). This office has determined that in governing access to a specific subset of information, the MPA prevails

¹The OIG states that it is withholding the addresses, telephone numbers, social security numbers, and family member information of department employees that are excepted under section 552.117(a)(3) and the previous determination set forth in Open Records Letter No. 2005-01067 (2005).

over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). We have marked the medical records of the requestor's client that may only be released in accordance with the MPA.

Both the OGC and the OIG raise section 552.134 of the Government Code for the remaining information, 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). Upon review of the information the OGC and OIG seek to withhold under this exception, we conclude section 552.134(a) is generally applicable to the information at issue. We note, however, some of this information relates to alleged crimes involving inmates. Therefore, the OGC and OIG must release basic information related to these incidents pursuant to section 552.029. 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. With the exception of basic information, the OGC must withhold the information it has submitted under section 552.134.² With the exception of basic information, the OIG must withhold the remaining information it has submitted under section 552.134.³

²As our ruling is dispositive, we need not address the OGC's remaining argument against disclosure for this information.

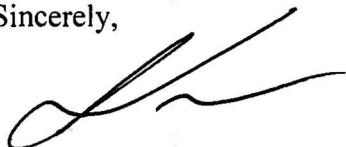
³As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure, except to note that basic information under section 552.029(8) corresponds to basic front-page information under section 552.108(c) of the Government Code. *See* Gov't Code § 552.108(c); *Houston Chronicle 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.*

In summary, the requestor's client's medical record we have marked may only be released in accordance with the MPA. Except for basic information, the OGC must withhold the information it has submitted, and the OIG must withhold the remaining information it has submitted, 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/agn

Ref: ID# 430059

Enc. Submitted documents

c: Requestor
(w/o enclosures)