ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2011

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

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

OR2011-14346

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# 431818.

The Texas Department of Criminal Justice (the "department") received a request for all investigations pertaining to a specified incident. 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 section 552.134 of the Government Code. The OIG states it will provide some of its responsive information to the requestor with 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, 552.130, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The OIG seeks to withhold a portion of the information it has submitted as Exhibit B under section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). The OIG has marked a correction officer's date of birth and an inmate's date of birth in Exhibit B. Upon review, we agree the OIG must withhold the correction officer's date of birth it has marked in Exhibit B under section 552.102(a) of the Government Code. However, because the inmate is not a department employee, his date of birth may not be withheld under section 552.102(a) of the Government Code. As the OIG has not claimed any other exceptions to disclosure for the inmate's date of birth in Exhibit B, the OIG must release this information. The OIG states it will release the remaining information in Exhibit B.

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, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in 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.

---

[1]Open 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.

> (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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office has also determined 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).

The OIG's investigation records submitted as Exhibit C include medical records subject to the MPA, which we have marked. We note, however, this information pertains to a deceased individual, and the requestor is the deceased individual's sister. Medical records pertaining to a deceased patient may only be released upon the signed consent of the deceased's personal representative. *See* Occ. Code § 159.005(a)(5). The consent must specify (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. *Id.* §§ 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). We note in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* ORD 598. Accordingly, the marked medical records may be released only in accordance with the MPA. *See id.*

The OGC claims its inmate information, and the OIG claims its remaining investigation 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 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 remaining inmate and investigation records, we conclude section 552.134(a) is generally applicable to this information. We note, however, the OGC's and the OIG's remaining records pertain to alleged crimes involving an inmate and an 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. 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 indicates it has released basic information about the alleged crime and the inmate's death at issue. Therefore, the OIG must withhold its remaining investigation records pursuant to section 552.134 of the Government Code. Additionally, the OGC must release basic information about the alleged crime and the inmate's death at issue in its records and withhold the remainder of its inmate records pursuant to section 552.134 of the Government Code.[2]

In summary, the OIG must withhold the correction officer's date of birth it has marked in Exhibit B under section 552.102(a) of the Government Code and release the remaining information in Exhibit B. The marked medical records in the OIG's information may be released only in accordance with the MPA. The OIG must withhold its remaining investigation records pursuant to section 552.134 of the Government Code. With the exception of basic information, the OGC must withhold its remaining inmate records 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,

---

[2]As our ruling is dispositive, we need not address the OGC's and OIG's remaining arguments against disclosure.

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,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 431818

Enc. Submitted documents

c: Requestor
(w/o enclosures)