



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 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

OR2011-16016

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# 434976.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a deceased inmate. You inform us some of the requested information either has been or will be released, with redactions pursuant to sections 552.117(a)(3) and 552.147 of the Government Code.¹ You claim the rest of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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

¹Open Records Letter No. 2005-01067 (2005) 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 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). 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 under the Act.

Code § 552.101. This exception encompasses information other statutes make confidential. Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. 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). 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). We note the MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” Occ. Code § 159.001. Based on this definition, a deceased person is not a “patient” under section 159.002 of the MPA. Thus, the MPA is applicable only to records relating to a person who was alive at the time of the diagnosis, evaluation, or treatment to which the records pertain. Medical records must be released on receipt of signed, written consent, provided 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 id.* §§ 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). The department must withhold the medical records and information obtained from medical records we have marked under section 159.002 of the MPA, unless the department receives the required written consent for release of the medical records under section 159.005(a)(5) of the MPA.

Section 552.102(a) of the Government Code 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). You have marked information the department seeks to withhold under section 552.102(a). We agree the department must withhold the birth date we have marked, which is that of an employee of the department, under section 552.102(a) of the Government Code. As the other birth date you have marked is not that of an employee of the department, the other birth date at issue may not be withheld under section 552.102(a) and must be released.

Section 552.134 of the Government Code is applicable to information relating to inmates of the department. Section 552.134(a) states that

[e]xcept 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 552.029 of the Government Code provides in part that

[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 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). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Although section 552.134(a) is generally applicable to the rest of the submitted information, the remaining information pertains to an inmate's death in custody. Therefore, the department must release basic information about the custodial death pursuant to section 552.029. The basic information that must be released includes the time and place of the incident, the names of inmates and of 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. Except for basic information under section 552.029 of the Government Code, the department must withhold the rest of the submitted information under section 552.134 of the Government Code.

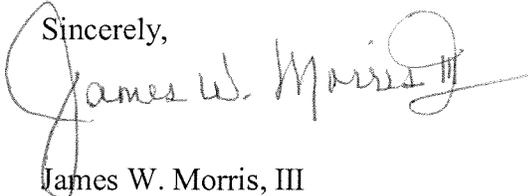
We note the requestor, as consul general of the Consulado General De Mexico En Dallas, asserts a right of access to the submitted information under article 36 of the Vienna Convention on Consular Relations. Although article 36 grants consular officers the right to communicate and visit with nationals of the sending state, including those who are in prison or custody or have been detained, it does not grant consular officers access to confidential records of our state. Therefore, the department (1) must withhold the marked medical records and information obtained from medical records under section 159.002 of the MPA, unless the department receives the required written consent for release of the medical records under section 159.005(a)(5) of the MPA; (2) must withhold the birth date we have marked under section 552.102(a) of the Government Code and release the other birth date you have marked; and (3) must withhold the rest of the submitted information under section 552.134

of the Government Code, except for basic information under section 552.029 of the Government Code.²

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 434976

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²As we are able to make these determinations, we do not address your other arguments against disclosure, except to note basic information under section 552.029(8) corresponds to the basic front-page information that may not be withheld under section 552.108 of the Government Code. See Gov't Code § 552.108(c); *Houston Chronicle Publishing 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).