



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2011-17351

Dear Ms. Monteros:

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# 437626 (CA-11-370).

The El Paso County Sheriff's Office (the "sheriff") received a request for "all investigative reports including supplemental reports, photographs, statements, recordings, 911 calls and all other documents/records" pertaining to a specified accident involving a specified individual. You state the sheriff will release the Texas Peace Officer's Crash Report and other responsive information. *See* Transp. Code § 550.065(c)(4) (officer's accident report must be released to person who provides two of following three pieces of information: date of accident; name of any person involved in accident; specific location of accident). You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 section encompasses information protected by other statutes, such as the Medical Practices Act ("MPA"). Medical records are confidential under 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.

(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). We also have concluded 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). You have submitted photographs of individuals taken while the individuals were at the hospital. You do not inform us, however, that these photographs were created by hospital personnel or that they are part of the individuals' hospital records; rather, we understand the photographs were taken by law enforcement personnel for law enforcement purposes. Upon review, therefore, we find the submitted "hospital photos" in Attachment B do not constitute medical records for purposes of the MPA, and they may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. You state the submitted “autopsy photos” in Attachment B consist of photographs of a body taken during an autopsy that are confidential pursuant to section 11 of article 49.25. Upon review, we agree all of the “autopsy photos” in Attachment B consist of photographs of a body taken during an autopsy. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the sheriff must withhold the submitted “autopsy photos” under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Next, you marked driver’s license numbers and license plate numbers in Attachment B under section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). The sheriff must withhold the driver’s license numbers and license plate numbers you have marked in Attachment B, and the license plate numbers that are discernible in photographs IMG-0009, IMG-0016, IMG-0018, IMG-0029, IMG-0044, IMG-0045, and IMG-0227, under section 552.130 of the Government Code.

You also seek to withhold the photograph of a driver’s license of a deceased individual under section 552.130 of the Government Code. However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, the sheriff may not withhold photograph IMG-0197 under section 552.130.

In summary, the sheriff must withhold the submitted “autopsy photos” in Attachment B under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The sheriff must withhold the driver’s license numbers and license plate numbers you have marked in Attachment B, and the license plate numbers that are discernible in photographs IMG-0009, IMG-0016, IMG-0018, IMG-0029, IMG-0044, IMG-0045, and IMG-0227, under section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive style with a long horizontal flourish at the end.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 437626

Enc. Submitted documents

c: Requestor
(w/o enclosures)