



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2011

Mr. Michael Shaunessy  
For Llano County Sheriff's Office  
Sedgwick, L.L.P.  
919 Congress Avenue, Suite 1250  
Austin, Texas 78701

OR2011-18724

Dear Mr. Shaunessy:

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# 439442.

The Llano County Sheriff's Office (the "sheriff"), which you represent, received a request for "intake and booking records, medical and psychiatric assessments, and records of medical, psychiatric, and psychological treatment, including treatment provided by independent contractors, medication records, and restraint or seclusion logs" for a specified individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public

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<sup>1</sup>Although you initially raised sections 552.107, 552.111, 552.115 and 552.117 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, you have not submitted any arguments explaining how these exceptions apply to the submitted information. Therefore, we assume you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302.

information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a). The submitted information includes magistrate warnings and court-filed documents, which we have marked, that are subject to section 552.022(a)(17). Although you raise section 552.108 of the Government Code for the magistrate warnings and court-filed documents in Exhibit F, this is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the magistrate warnings and court-filed documents we have marked may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of the information at issue, the sheriff must release the magistrate warnings and court-filed documents we have marked.

Although you assert the submitted information is excepted under sections 552.101, 552.103, and 552.108 of the Government Code, we note the requestor is a representative of Disability Rights Texas, formerly known as Advocacy, Inc. ("DRTX"), which has been designated as the state's protection and advocacy system ("P&A system") for purposes of the federal Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), 42 U.S.C. §§ 10801-10851, the Developmental Disabilities Assistance and Bill of Rights Act ("DDA Act"), 42 U.S.C. §§ 15041-15045, and the Protection and Advocacy of Individual Rights Act ("PAIR Act"), 29 U.S.C. § 794e. *See* Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977); Attorney General Opinion JC-0461 (2002); *see also* 42 C.F.R. §§ 51.2 (defining "designated official" and requiring official to designate agency to be accountable for funds of P&A agency), .22 (requiring P&A agency to have a governing authority responsible for control).

The PAIMI provides, in relevant part, that DRTX, as the state's P&A system, shall

(1) have the authority to—

(A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred[.]

42 U.S.C. § 10805(a)(1)(A). Further, the PAIMI provides DRTX shall

(4) . . . have access to all records of—

...

(B) any individual (including an individual who has died or whose whereabouts are unknown)–

(i) who by reason of the mental or physical condition of such individual is unable to authorize the [P&A system] to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the [P&A system] or with respect to whom as a result of monitoring or other activities (either of which result from a complaint or other evidence) there is probable cause to believe that such individual has been subject to abuse or neglect[.]

*Id.* § 10805(a)(4)(B)(i)-(iii). The term “records” as used in the above-quoted provision

includes reports prepared by any staff of a facility rendering care and treatment [to the individual] or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.

*Id.* § 10806(b)(3)(A); *see also* 42 C.F.R. § 51.41(c) (addressing P&A system’s access to records under PAIMI). Further, PAIMI defines the term “facilities” and states the term “may include, but need not be limited to, hospitals, nursing homes, community facilities for individuals with mental illness, board and care homes, homeless shelters, and jails and prisons.” 42 U.S.C. § 10802(3). The DDA Act provides, in relevant part, that a P&A system shall

(B) have the authority to investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

...

(I) have access to all records of–

(ii) any individual with a developmental disability, in a situation in which–

(I) the individual, by reason of such individual's mental or physical condition, is unable to authorize the system to have such access;

(II) the individual does not have a legal guardian, conservator, or other legal representative, or the legal guardian of the individual is the State; and

(III) a complaint has been received by the system about the individual with regard to the status or treatment of the individual or, as a result of monitoring or other activities, there is probable cause to believe that such individual has been subject to abuse or neglect[.]

*Id.* § 15043(a)(2)(B), (I)(ii). The DDA Act states the term "record" includes

(1) a report prepared or received by any staff at any location at which services, supports, or other assistance is provided to individuals with developmental disabilities;

(2) a report prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury, or death occurring at such location, that describes such incidents and the steps taken to investigate such incidents; and

(3) a discharge planning record.

*Id.* § 15043(c). The PAIR Act provides, in relevant part, that a P&A system will "have the same . . . access to records and program income, as are set forth in [the DDA Act]." 29 U.S.C. § 794e(f)(2).

The requestor states the deceased individual suffered from a disability and DRTX received information this individual died while he was an inmate in the custody of the sheriff. DRTX explains it intends to investigate this death for possible incidents of abuse or neglect of an individual with developmental disability as defined by federal law. *See* 42 USC § 15002(8) (defining term "developmental disability"); *see id.* § 10805(a)(4). DRTX asserts the individual at issue does not have a legal guardian, conservator, or other legal representative acting on his behalf with regard to the investigation of possible abuse and neglect and his death. Additionally, DRTX states it has probable cause to believe the individual's death may have been the result of abuse and neglect. *See* 42 C.F.R. § 51.2 (stating that the probable cause decision under PAIMI may be based on reasonable inference drawn from one's experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect).

We note a state statute is preempted by federal law to the extent it conflicts with that federal law. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange*, 905 F. Supp. 381, 382 (E.D. Tex.1995). Further, federal regulations provide state law must not diminish the required authority of a P&A system. *See* 45 C.F.R. § 1386.21(f); *see also Iowa Protection and Advocacy Services, Inc. v. Rasmussen*, 206 F.R.D. 630, 639 (S.D. Iowa 2001); *Iowa Prot. & Advocacy Servs., Inc. v. Gerard*, 274 F. Supp. 2d 1063 (N.D. Iowa 2003) (broad right of access under section 15043 of title 42 of the United States Code applies despite existence of any state or local laws or regulations which attempt to restrict access; although state law may expand authority of P&A system, state law cannot diminish authority set forth in federal statutes); *cf.* 42 U.S.C. § 10806(b)(2)(C). Similarly, Texas law states, “[n]otwithstanding other state law, [a P&A system] . . . is entitled to access to records relating to persons with mental illness to the extent authorized by federal law.” Health & Safety Code § 615.002(a). Thus, PAIMI and the DDA grant DRTX access to “records” and to the extent state law provides for the confidentiality of “records” requested by DRTX, its federal right of access under PAIMI preempts state law. *See* 42 C.F.R. § 51.41(c); *see also Equal Employment Opportunity Comm'n*, 905 F. Supp. at 382. Accordingly, we must address whether the submitted information constitutes “records” of an individual with a disability as defined by the DDA and mental illness as defined by PAIMI.

DRTX contends, however, the information listed in sections 10806(b)(3)(A) and 15043(c) was not meant to be an exhaustive list.<sup>2</sup> The requestor contends it was Congress’s intent to grant a P&A system access to any and all information, including the particular information at issue here, the P&A system deems necessary to conduct an investigation. We disagree. By these statutes’ plain language, access is limited to “records.” *See In re M&S Grading, Inc.*, 457 F.3d 898, 901 (8th Cir. 2000) (analysis of a statute must begin with the plain language). Although the two definitions of “records” are not limited to the information specifically enumerated in those clauses, we do not believe that Congress intended for the definitions to be so expansive as to grant a P&A system access to any information it deems necessary. Such a reading of the statutes would render sections 10806(b)(3)(A) and 15043(c) insignificant. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (statute should be construed in a way that no clause, sentence, or word shall be superfluous, void, or insignificant). Furthermore, in light of Congress’s evident preference for limiting the scope of access, we are unwilling to assume that Congress meant more than it said in enacting the PAIMI Act and the DDA Act. *See Kofa v. INS*, 60 F.3d 1084 (4th Cir. 1995) (stating that statutory construction must begin with language of statute; to do otherwise would assume that Congress does not express its intent in words of statutes, but only by way of legislative history); *see generally Coast Alliance v. Babbitt*, 6 F. Supp. 2d 29 (D.D.C. 1998) (stating that if, in following Congress’s plain language in statute, agency cannot carry out Congress’s

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<sup>2</sup>Use of the term “includes” in sections 10806(b)(3)(A) and 15043(c) of title 42 of the United States Code indicates that the definitions of “records” are not limited to the information specifically listed in those sections. *See St. Paul Mercury Ins. Co. v. Lexington Ins. Co.*, 78 F.3d 202 (5th Cir. 1996); *see also* 42 C.F.R. § 51.41.

intent, remedy is not to distort or ignore Congress's words, but rather to ask Congress to address problem).

We note the information in Exhibit D and the information we have marked in Exhibit E consists of records related to medical treatment that was provided to the named individual during his incarceration with the sheriff, as well as other medical information and records related to the named individual's death. We further note the information in Exhibit G pertains to statements and evidence related to the investigation of the named individual's death. Thus, in this instance, even though the sheriff claims these documents are excepted from disclosure under sections 552.101 and 552.103, these claims are preempted by the PAIMI and the DDA. Accordingly, based on DRTX's representations, we determine DRTX has a right of access to the information in Exhibits D and G and the information we marked in Exhibit E pursuant to subsections (a)(1)(A) and (a)(4)(B) of section 10805 of title 42 the United States Code and section 15043 of title 42 the United States Code. Thus, the sheriff must release this information to the requestor.

The information in Exhibit F and the remaining information in Exhibit E consists of records related to confinement and criminal charges and indictments against the named individual. In this instance, the information at issue is related to criminal law enforcement and is being utilized for law enforcement purposes. Upon review, we conclude DRTX has failed to demonstrate the applicability of section 10806 of title 42 of the United States Code or section 15043 of title 42 of the United States Code to this information. Accordingly, DRTX does not have a right of access to this information, and we will address the sheriff's claimed exceptions for this information.

You assert section 552.103 of the Government Code for the submitted information. Section 552.103 provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation is pending or

reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You assert the sheriff reasonably anticipates litigation pertaining to the individual's death because DRTX provides legal services and advocates for legal and human rights of individuals with disabilities and DRTX states the individual's death may have been the result of abuse and neglect. However, you have not informed us the requestor has actually threatened litigation or otherwise taken any concrete steps toward the initiation of litigation. *See* ORD 331. Consequently, you have not established the sheriff reasonably anticipated litigation when it received the request for information. Accordingly, the sheriff may not withhold any of the submitted information under section 552.103 of the Government Code.

You seek to withhold Exhibit F from disclosure under section 552.108 of the Government Code. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted an affidavit from the sheriff's Jail Administrator in which the Jail Administrator states that "immediately following [the named individual's] death, the [sheriff] notified [the Texas Rangers] of the death and [the Texas Rangers] conducted an investigation. The [sheriff] has received a Grand Jury subpoena for records related to [the named individual] and, based on that subpoena, it is my understanding that the Grand Jury has not completed their investigation into [the named individual's] death." We note, however, that you have

not submitted to this office a representation from any law enforcement agency that may have an interest in withholding the information that they want the information in Exhibit F to be withheld. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). We further note that Exhibit F consists of information pertaining to the individual's prior crimes and not the circumstances surrounding his death. Therefore, upon review of your representations and the submitted information, we find you have not demonstrated that the release of Exhibit F at this time would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) is not applicable in this instance, and the information in Exhibit F may not be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> Gov't Code § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. The information we have marked in Exhibits E and F constitutes CHRI that is confidential under chapter 411. Accordingly, the sheriff must withhold the Federal Bureau of Investigation (“FBI”) numbers that we have marked in Exhibit E and the information we

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

marked in Exhibit F under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note privacy is a personal right that lapses at death, and thus common-law privacy is not applicable to information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). We note the information in Exhibit E and F that pertains to a deceased individual is not protected by common-law privacy, and it may not be withheld under section 552.101 on that basis. We further find that none of the information in Exhibits E or F relating to living individuals is intimate or embarrassing and of no legitimate public interest. Accordingly, none of the information in Exhibits E and F may be withheld on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy.<sup>4</sup> Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied constitutional privacy to protect certain information related to incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). This office has held that those individuals who correspond with inmates possess a

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

“first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure,” and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185 at 2; *see State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976). The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. In that decision, our office found that “the public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure.” ORD 185 at 2. Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORDs 430, 428. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. ORD 185; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). We have marked identifying information in Exhibit E for people with whom the inmate has corresponded and inmate visitor information the sheriff must withhold under section 552.101 in conjunction with constitutional privacy.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs the public availability of medical records.<sup>5</sup> *See* Occ. Code §§ 151.001-165.160. 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.

*Id.* § 159.002(b)-(c). This office has concluded 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). 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

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<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). When a patient is deceased, as is presently the case, medical records may be released only on the signed consent of the deceased's personal representative. *See* Occ. Code § 159.005(a)(5). The consent in that instance 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. *See 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). The information we have marked in Exhibit F contains medical records that are subject to the MPA. Accordingly, the sheriff must withhold the medical records we have marked in Exhibit F under section 159.002 of the Occupations Code unless it receives the required written consent for release of the information under section 159.005(a)(5) of the Occupations Code.

The information in Exhibit F includes information that is subject to section 552.136 of the Government Code.<sup>6</sup> Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Accordingly, the sheriff must withhold the routing and bank account numbers we have marked in Exhibit F under section 552.136 of the Government Code.

In summary, the sheriff must withhold (1) the FBI numbers we have marked in Exhibit E and the CHRI we marked in Exhibit F under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (2) the marked identifying information in Exhibit E for people with whom the inmate has corresponded and inmate visitor information under section 552.101 in conjunction with constitutional privacy; (3) the medical records we have marked in Exhibit F pursuant to section 552.101 of the Government Code in conjunction with the MPA, unless the sheriff receives written consent for release of those records that complies with section 159.005(a)(5) of the Occupations Code; and (4) the routing and bank account numbers we have marked in Exhibit F under section 552.136 of the Government Code. The remaining information must be released to the requestor.<sup>7</sup>

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<sup>6</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>7</sup>We note the requestor has a right of access in this instance to information the sheriff would be required to withhold from the general public. Should the sheriff receive another request for this same information from a different requestor, the sheriff should resubmit this information and request another ruling. *See* Gov’t Code §§ 552.301(a), .302.

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](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 cursive script that reads "Sean Opperman". The signature is written in black ink and is positioned above the typed name.

Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 439442

Enc. Submitted documents

c: Requestor  
(w/o enclosures)