



ATTORNEY GENERAL OF TEXAS
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Mr. John C. West
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OR2011-19241

Dear Ms. Towe 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# 441090.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named inmate during a specified time period. The department's Office of the General Counsel (the "OGC") and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate responsive records each seeks to withhold from disclosure. The OGC states some of the requested information has been or will be released to the requestor. The OGC claims its submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG indicates it has released some information pertaining to the submitted file, including a copy of the autopsy order, as well as the custodial death report. *See* Code Crim. Proc. art. 49.18(b). The OIG states it is withholding 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 OIG claims its remaining submitted information 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 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. Section 552.101 encompasses information made confidential by statute, such as section 611.002(a) of the Health and Safety Code, which provides, “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* ORD 565. These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we find the information the OGC has marked, the additional information we have marked within the documents submitted by the OGC, and the information we have marked within the information submitted by the OIG, constitutes mental health records that are confidential under section 611.002 of the Health and Safety Code. Access to mental health records is governed by the provisions of sections 611.004 and 611.0045, rather than the Act. Open Records Decision Nos. 598 (1991), 451 at 4 (1986). In this instance, the requestor may be the deceased individual’s personal representative. Therefore, the marked mental health records must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code unless the requestor is authorized to obtain the records under sections 611.004 and 611.0045. *See* Health & Safety Code § 611.004(a)(5) (professional may disclose confidential information to patient’s personal representative if patient is deceased).²

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical

¹We note Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) 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. *See* Gov’t Code § 552.147(b).

²As our ruling is dispositive with respect to the additional information we marked within the information submitted by the OGC, we need not address the remaining argument against disclosure of that information.

records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in relevant 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). This office has determined in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act, such as sections 552.108 and 552.134 of the Government Code. *See* 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; ORD 598. We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990).

Upon review, we agree most of the remaining portions of the information marked by the OGC, and the information we have marked within the documents submitted by the OIG, constitute records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. 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) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 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). As noted above, the requestor may be the authorized representative of the individual whose medical records are at issue. Thus, the submitted medical records must be withheld under section 552.101 of the Government Code in

conjunction with the MPA, unless the department receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA. However, we note the OGC has failed to demonstrate how some of the information it seeks to withhold under the MPA constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. That information, which we have marked, does not consist of medical records for purposes of the MPA, and the OGC may not withhold it under section 552.101 on that basis.

Section 552.108(a)(1) of the Government Code 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG states its remaining information pertains to a criminal investigation that is currently open and under investigation. Based on this representation, we conclude the release of the information at issue 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the OIG’s remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which the OIG indicates it has released, the OIG may withhold its remaining submitted information under section 552.108(a)(1) of the Government Code.³

Section 552.134 of the Government Code encompasses information relating to inmates of the department and states, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

³As our ruling under section 552.108 of the Government Code is dispositive for the information at issue, we need not address your remaining arguments against disclosure for the submitted information, except to note the basic information at issue is not excepted from disclosure under section 552.134. *See* Gov’t Code § 552.029(8) (basic information about the death of an inmate in custody is not excepted under section 552.134).

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides, however:

Notwithstanding 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.

The OGC claims section 552.134 for its remaining submitted information. We note although the inmate to whom the information at issue pertains is deceased, section 552.134 is applicable to information that relates to the decedent as an inmate. Thus, we find section 552.134 is generally applicable to the remaining information submitted by the OGC. We note, however, some of the information at issue is related to the death of an inmate in custody. Further, additional portions of the information at issue are related to incidents involving use of force. Basic information about these incidents is subject to disclosure under section 552.029(8). Basic information under section 552.029(8) 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. Therefore, with the exception of the basic information relating to the death of an inmate in custody and incidents involving the use of force, which must be released under section 552.029(8), the OGC must withhold its remaining submitted information under section 552.134 of the Government Code.

In summary, the marked mental health records must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code unless the requestor is authorized to obtain the records under sections 611.004 and 611.0045 of the Health and Safety Code. The submitted medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the department receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA. With the exception of the basic information, which the OIG indicates has been released, the OIG may withhold its remaining submitted information under section 552.108(a)(1) of the Government Code. With the exception of the basic information relating to the death of an inmate in custody and incidents involving the use of force, which must be released under section 552.029(8), the OGC must withhold its remaining submitted information 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 441090

Enc. Submitted documents

c: Requestor
(w/o enclosures)