



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Mr. David K. Walker
Montgomery County Attorney
207 West Phillips Suite 100
Conroe, Texas 77301

OR2012-01238

Dear Mr. Walker:

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# 444059 (No. 2011-5976).

The Montgomery County Sheriff’s Department (the “department”) received a request for information related to the death of a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 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 contend, and have provided an affidavit stating, release of the submitted information would interfere with an pending criminal investigation of a death. The submitted incident report states, however, the individual’s death was found to be accidental and the case has been closed. Thus, as the information at issue contradicts your representation and affidavit, we are unable to find that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1); 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). We therefore conclude the department may not withhold the submitted information under section 552.108 of the Government Code.

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. 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 also have concluded that 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). 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 related 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). We have marked medical records that must be withheld 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 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which is applicable to records of the provision of emergency medical services (“EMS”). Section 773.091 provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or

maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). Section 773.091 further provides that

[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(g). We have marked EMS records that are confidential under section 773.091, except for any information subject to section 773.091(g). We note EMS records may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” *Id.* §§ 773.092(e)(4), .093(a). Among the individuals authorized to act on the patient’s behalf in providing written consent is a “personal representative” of a deceased patient. *Id.* Section 773.093 of the Health and Safety Code provides that a consent for release of EMS records must specify (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. Thus, the marked EMS records must be released in their entirety pursuant to sections 773.092 and 773.093 of the Health and Safety Code if the department receives the required consent. If the department does not receive the required consent for release, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for any information subject to section 773.091(g).

We note section 552.130 of the Government Code is applicable to some of the remaining information.¹ This section excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130(a)(1). We have marked driver’s license information the department must withhold under section 552.130 of the Government Code. Because this exception protects privacy, which is a personal right that lapses at death, the deceased individual’s driver’s license information may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ.

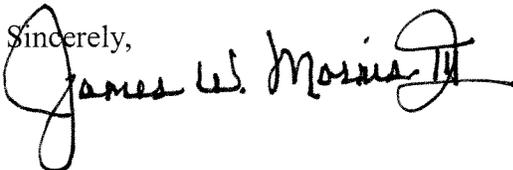
¹This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

In summary, the department must withhold (1) the marked medical records under section 159.002 of the MPA unless the department receives the required consent for release under section 159.005(a)(5); (2) the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, except for any information subject to section 773.091(g), unless the department receives the required consent for release under sections 773.092 and 773.093; and (3) the marked driver's license information under section 552.130 of the Government Code. The rest of the submitted 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,


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

JWM/em

Ref: ID# 444059

Enc: Submitted information

c: Requestor
(w/o enclosures)