



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2012

Mr. Kent A. Brown
Assistant County Attorney
Nueces County
901 Leopard Street, Room 207
Corpus Christi, Texas 78401-3680

OR2012-03012

Dear Mr. Brown:

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# 446599.

The Nueces County Medical Examiner's Office (the "medical examiner") received a request for the autopsy report, toxicology reports, investigation reports, color photographs, and any other tangible documents related to a named individual during a specified time period. You state the medical examiner has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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. Section 11 of article 49.25 of the Code of Criminal Procedure 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

¹Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under the Act or other law. See Gov't Code § 552.022.

disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, 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 Exhibit C consists of an autopsy photograph. Because neither exception to confidentiality applies to the information in this instance, the submitted autopsy photograph is confidential under section 11 of article 49.25 of the Code of Criminal Procedure and must be withheld from disclosure in conjunction with section 552.101 of the Government Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides:

- (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 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). This office also has 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). Medical records must be released upon receipt of the patient’s 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* Occ. Code §§ 159.004, .005. After the death of a patient, medical records may be released only on the signed written consent of the deceased individual’s personal representative. *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).

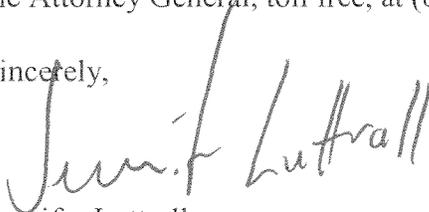
Upon review, we find Exhibit B consists of the named individual's medical records, which are subject to the MPA. Thus, Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the medical examiner receives signed written consent that complies with the MPA for the release of these records.

In summary, the medical examiner must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the medical examiner receives signed written consent that complies with the MPA for the release of these records. The medical examiner must release the remaining information.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 446599

Enc. Submitted documents

c: Requestor
(w/o enclosures)