



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 27, 2012

Mr. Ronald D. Stutes  
Potter Minton, P.C.  
110 North College, Suite 500  
Tyler, Texas 75702

OR2012-04434

Dear Mr. Stutes:

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# 448701.

The City of Palestine (the "city"), which you represent, received a request for information related to a specified investigation conducted by the city's police department, including medical records of a named individual. You state some responsive information has been released to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. 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. Section 552.101 encompasses information made confidential by statute, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent 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). 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 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). Section 159.001 of the MPA defines “patient” as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a “patient” under section 159.002 of the MPA. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Thus, the MPA is applicable only to records relating to a person who was alive at the time of diagnosis, evaluation or treatment to which the records pertain.

Upon review, we agree most of the submitted information 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. 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).

Accordingly, the medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the city receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA. However, we find none of the remaining submitted information consists of medical records for purposes of the MPA, and it may not be withheld under section 552.101 on that basis. As you raise no other exception to disclosure of this information, the records we have marked 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 448701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)