



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2012

Ms. Amy L. Currier
Public Information Officer
Texas Funeral Service Commission
P.O. Box 12217
Austin, Texas 78711

OR2012-04775

Dear Ms. Currier:

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# 449562.

The Texas Funeral Services Commission (the "commission") received a request for any and all information regarding all investigations and complaints pertaining to a specified entity. You state the commission is releasing some information to the requestor. You state the commission has redacted certain information under sections 552.130, 552.136, and 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, insurance policy numbers, bank account numbers, and bank routing numbers under section 552.136 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended sections 552.130 and 552.136 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) and subsection 552.136(b), respectively, without the necessity of seeking a decision from the attorney general. *See* Gov't Code §§ 552.130(c), .136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e) and section 552.136(e). *See id.* §§ 552.130(d), (e), .136(e). Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130 and subsection 552.136(a) in accordance with section 552.136, not Open Records Decision No. 684.

some of 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 other statutes make confidential, including the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code. *See Occ. Code* §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent 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). We note the MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” *Id.* § 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 relating to a person who was alive at the time of the diagnosis, evaluation, or treatment to which the records pertain. Upon review, we find you have failed to demonstrate how any portion of the submitted information constitutes a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the commission may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected

by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note that 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). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note some of the remaining information pertains only to deceased individuals and does not implicate the privacy interest of a living individual. Further, we find none of the remaining information that pertains to living individuals is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Upon review, we find the commission must withhold the driver's license numbers we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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.” *Id.* § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). We note this office has determined an insurance policy number is an access device for purposes of section 552.136. Upon review, we find the commission must generally withhold the information we have marked under section 552.136 of the Government Code. However, section 552.136 protects the privacy interests of individuals, and, as previously noted, the right to privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, to the extent the

insurance policy numbers we have marked pertain to accounts in which a living individual has an interest, the commission must withhold them under section 552.136. However, if the insurance policy numbers we have marked pertain solely to deceased individuals, they may not be withheld under section 552.136. Regardless, the commission must withhold the remaining information we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Upon review, we find the e-mail addresses we have marked in the remaining information are not of the type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the commission must withhold the e-mail addresses we have marked in the remaining information under section 552.137 of the Government Code, unless the owners consent to disclosure.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Thus, this exception is not applicable to the social security number of a deceased individual. Although you state you have redacted social security numbers pursuant to Open Records Decision No. 684, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b). Therefore, to the extent the social security numbers in the remaining information belong to a living person, the commission may withhold them under section 552.147 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the driver’s license numbers we have marked under section 552.130 of the Government Code. To the extent the insurance policy numbers we have marked pertain to accounts in which a living individual has an interest, the commission must withhold them under section 552.136 of the Government Code. However, if the insurance policy numbers we have marked pertain solely to deceased individuals, they may not be withheld under section 552.136. Regardless, the commission must withhold the remaining information we have marked under section 552.136. The commission must withhold the e-mail addresses we have marked in the remaining information under section 552.137 of the Government Code, unless the owners consent to disclosure. To the extent the social security numbers in the remaining information belong to a living person, the commission may withhold them under section 552.147 of the Government Code. The commission 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/ag

Ref: ID# 449562

Enc. Submitted documents

c: Requestor
(w/o enclosures)