



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2012-07311

Dear 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# 453859.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for a report related to a specified incident. You state some of the requested information will be released, including the custodial death report. *See* Code Crim. Proc. art. 49.18(b). You also state you will redact certain information subject to section 552.117 pursuant to Open Records Letter No. 2005-01067 (2005) and section 552.147(b) of the Government Code.¹ You claim the 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.

You indicate portions of the submitted information were at issue in Open Records Letter No. 2011-14346 (2011). In that ruling, we determined, in part, the department (1) may only release the marked medical records in accordance with the Medical Practice Act ("MPA");

¹Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) 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.

(2) must withhold the correction officer's date of birth it marked under section 552.102(a) of the Government Code; and (3) must withhold the remaining information under section 552.134 of the Government Code, with the exception of basic information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on the prior ruling as a previous determination and withhold the identical information in accordance with Open Records Letter No. 2011-14346. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We note portions of the submitted information were created after the previous request for information. Therefore, to the extent the information in the current request is not encompassed by the previous ruling, we will address your arguments.

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, such as the MPA, subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in 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). 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). This office has also determined 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).

The submitted information includes medical records subject to the MPA, which we have marked. We note this information pertains to a deceased individual, and the requestor is the deceased individual's sister. Medical records pertaining to a deceased patient may only be released upon the signed consent of the deceased's personal representative. *See* Occ. Code § 159.005(a)(5). The consent must specify (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. *Id.* §§ 159.004, .005. 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 note in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* ORD 598. Accordingly, the marked medical records may be released only in accordance with the MPA. *See id.*

We also note the submitted information includes emergency medical services ("EMS") records to which the requestor may have a right of access. Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The 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.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091-.094. Upon review, we find section 773.091 is applicable to the information we have marked. We note records that are confidential under section 773.091 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. Section 773.093 provides a consent for release of EMS records must be written and signed by the patient, authorized representative, or personal representative and 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. *Id.* § 773.093(a). As noted above, a specific statutory right of access provision prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, if the department receives proper consent, the marked EMS

records must generally be released in their entirety in accordance with chapter 773 of the Health and Safety Code. If the department does not receive the required consent for release, then except for any information subject to section 773.091(g), which is not confidential, the marked EMS records must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You claim the remaining information is excepted under section 552.134(a) of the Government Code, which relates to inmates of the department and provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice 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). Upon review of the remaining records, we conclude section 552.134(a) is generally applicable to this information. We note, however, the remaining records pertain to an alleged crime involving an inmate and an inmate's death in custody. Therefore, you must release basic information about the alleged crime and inmate's death pursuant to section 552.029. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Therefore, with the exception of basic information, you must withhold the remaining information pursuant to section 552.134 of the Government Code, including any information subject to section 773.091(g) of the Health and Safety Code that is not otherwise subject to release under sections 773.092 and 773.093.²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure. We note basic information under section 552.029(8) corresponds to the basic front-page information that may not be withheld under section 552.108 of the Government Code. See Gov't Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

In summary, to the extent the requested information is the same information that was previously ruled upon in Open Records Letter No. 2011-14346, the department must continue to rely upon that ruling and withhold or release the information in accordance with that ruling. To the extent the information was not previously ruled upon, (1) the marked medical records may only be released in accordance with the MPA; (2) except as specified in section 773.091(g), the department must withhold the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, unless the department receives the required written consent for release under sections 773.092 and 773.093; and (3) with the exception of basic information, the department must withhold the rest of the submitted information under section 552.134 of the Government Code, including any information encompassed by section 773.091(g) of the Health and Safety Code that is not otherwise subject to release under sections 773.092 and 773.093.

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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 453859

Enc. Submitted documents

c: Requestor
(w/o enclosures)