



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 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

OR2012-07398

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# 454323 (OIG No. 2012-00052).

The Texas Department of Criminal Justice (the "department") received a request for information related to a deceased inmate. You state some of the submitted information either has been or will be released, with redactions pursuant to sections 552.117(a)(3) and 552.147 of the Government Code.<sup>1</sup> You claim the rest of 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 information you submitted.

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<sup>1</sup>Open Records Letter No. 2005-01067 (2005) 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 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). 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 under the Act.

You note some or all of the submitted information was the subject of a previous request by the department for a decision, in response to which this office issued Open Records Letter No. 2011-03269 (2011). We find, however, that facts and circumstances relevant to the department's request for this decision are different from those on which the previous decision is based. *See* Open Records Decision No. 673 at 6-7 (2001) (open records letter ruling constitutes previous determination for purposes of Gov't Code § 552.301(a) when, among other things, the law, facts, and circumstances on the which the previous ruling is based have not changed). We therefore conclude the department may not dispose of the submitted information on the basis of Open Records Letter No. 2011-03269. Instead, we will consider the department's exceptions to disclosure.

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 the department must withhold under section 159.002 of the MPA, unless the department receives the required written consent for release of those records under section 159.005(a)(5) of the MPA.

Mental health records are confidential under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, which provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked mental health records the department must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain those records under sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(5) (professional may disclose confidential information to patient’s personal representative if patient is deceased).

Section 552.134 of the Government Code is applicable to information related to inmates of the department. Section 552.134(a) states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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 552.029 of the Government Code provides that

[n]otwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] 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). Thus, the legislature explicitly made section 552.134 subject to section 552.029. We conclude section 552.134(a) is generally applicable to the rest of the submitted information. In this instance, however, the information at issue pertains to an inmate's death in custody. Therefore, the department must release basic information about the inmate's death pursuant to section 552.029(8). The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Except for basic information under section 552.029(8) of the Government Code, the department must withhold the rest of the submitted information under section 552.134 of the Government Code.

In summary, the department must withhold (1) the marked medical records under section 159.002 of the MPA, unless the department receives the required written consent for release of those records under section 159.005(a)(5) of the MPA; (2) the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain those records under sections 611.004 and 611.0045 of the Health and Safety Code; and (3) the rest of the submitted information under section 552.134 of the Government Code, except for basic information about the inmate's death in custody under section 552.029(8) of the Government Code, which must be released. As we are able to make these determinations, we need not address your other exceptions to disclosure.<sup>2</sup>

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

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<sup>2</sup>We note basic information under section 552.029(8) corresponds to the basic offense and arrest information that may not be withheld under section 552.108 of the Government Code. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g 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) (summarizing types of information deemed public by *Houston Chronicle*).

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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name being more prominent.

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/em

Ref: ID# 454323

Enc: Submitted documents

c: Requestor  
(w/o enclosures)