



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2012

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

OR2012-11266

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# 459547.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for information pertaining to the death of a named inmate. You inform us that some of the requested information has been or will be released with certain information redacted pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report the Office of the Attorney General ("OAG") determines

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<sup>1</sup>We note Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) 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. See Gov't Code § 552.147(b).

is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). The format of the report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The OAG has determined the four-page report and summary must be released to the public but any other documents submitted with the revised report are confidential under article 49.18(b). Therefore, the department must release the custodial death report we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure.

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. Medical records are confidential under the Medical Practice Act (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:

(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 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). 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. Thus, section 159.002 is applicable only to the medical records of a person who was alive at the time of the diagnosis, evaluation, or treatment.

Medical records must be released on receipt of signed, written consent, provided that 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 patient who is now deceased 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). 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* ORD No. 598. Upon review, we have marked medical records that may only be released in accordance with the MPA.<sup>2</sup> However, we find the remaining information does not consist of medical records subject to the MPA, and thus, the department may not withhold any of this information on that basis.

You raise section 552.108(a)(1) of the Government Code for the remaining information. This exception excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the information at issue pertains to an open criminal investigation. Based on your representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable to this information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of basic information, which you state has been or will be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

<sup>3</sup>As our ruling under section 552.108 of the Government Code is dispositive, we need not address your remaining arguments against disclosure for the submitted information, except to note the basic information at issue is not excepted from disclosure under section 552.134. *See* Gov’t Code § 552.029(8) (basic information about the death of inmate in custody is not excepted under section 552.134).

We note the requestor, as a representative of the Consulado General De Mexico (the "consular"), asserts a right of access to the submitted information under Articles 5 and 37 of the Vienna Convention on Consular Relations. Article 5 lists and describes the functions of the consular, while Article 37 lists and describes the circumstances in which relevant state authorities have a duty to inform the consular. However, these articles do not grant the consular access to confidential records of our state. Therefore, in summary, the department must release the custodial death report we have marked pursuant to article 49.18(b) of the Code of Criminal Procedure. The medical records we have marked may only be released in accordance with the MPA. With the exception of basic information, which the department states has been or will be released, the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 459547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)