



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

Mr. Kent A. Brown
Assistant County Attorney
Office of the County Attorney
County of Nueces
901 Leopard Room 207
Corpus Christi, Texas 78401-3680

OR2012-12373

Dear Mr. Brown:

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# 465572 (ORR# 12-1097).

The Nueces County Medical Examiner (the "medical examiner") received a request for records pertaining to a named deceased individual. We understand the medical examiner will release some information 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. This exception encompasses information other statutes make confidential. Section 611.002(a) of the Health and Safety Code provides "[c]ommunications 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." Health & Safety Code § 611.002(a). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See Open Records*

Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we find Exhibit C constitutes mental health records that are confidential under section 611.002 of the Health and Safety Code. This information may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.¹ *See id.* § 611.004(a)(5) (professional may disclose confidential information to patient's personal representative if patient is deceased).

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. You contend the photographs submitted as Exhibit B are confidential under section 11 of article 49.25 of the Code of Criminal Procedure. You state the photographs were taken during an autopsy. You also state the statutory exceptions to confidentiality are not applicable in this instance. Based on your representations and our review, we conclude the medical examiner must withhold Exhibit B under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

In summary, the medical examiner may only release Exhibit C in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The medical examiner must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

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.

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a horizontal line extending to the right.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 465572

Enc. Submitted documents

c: Requestor
(w/o enclosures)