



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2013

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

OR2013-00002

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# 475547.

The Nueces County Medical Examiner's Office (the "medical examiner's office") received a request for records pertaining to a named individual. You state the medical examiner's office will release some of the requested information but 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part the following:

(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.

Occupation Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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. Upon review, we find Exhibit B consists of medical records. Accordingly, the medical examiner's office must withhold Exhibit B under section 552.101 in conjunction with the MPA.

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 the following:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services 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). The submitted information contains records made and maintained by emergency medical services personnel. Upon review, we find section 773.091 is applicable to Exhibit C. Thus, with the exception of the information subject to section 773.091(g), which is not confidential under section 773.091 and must be released, the medical examiner's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

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

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 Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from

required public disclosure in accordance with Chapter 552, Government Code, 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.

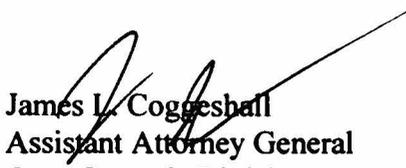
Code Crim. Proc. art. 49.25. You inform us Exhibit D consists of autopsy photographs taken by the medical examiner's office in connection with an autopsy. You indicate the exceptions to confidentiality provided in section 11 of article 49.25 are not applicable. Accordingly, we agree Exhibit D is confidential under article 49.25, and the medical examiner's office must withhold this information under section 552.101 of the Government Code on that ground.

To conclude, the medical examiner's office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with the MPA. The medical examiner's office must release the information subject to section 773.091(g) of the Health and Safety Code in Exhibit C, but must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The medical examiner's office must withhold Exhibit D 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 475547

Enc. Submitted documents

c: Requestor
(w/o enclosures)