



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2013

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

OR2013-17553

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# 501668.

The Nueces County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to a named individual. You indicate you will release some of the requested information upon the requestor's response to a cost estimate. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 section encompasses information made confidential by other statutes. Access to medical records is governed by 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:

(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). We note 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. *See* ORDs 487, 370, 343. Thus, the MPA is applicable only to records related to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain. Upon review, we find none of the submitted information constitutes medical records subject to the MPA. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code on the basis of the MPA.

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 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.

Crim. Proc. Code art. 49.25, § 11. We note the Eighty-third Legislature amended section 11 of article 49.25. Act of May 1, 2013, 83rd Leg., R.S., S.B. 457, § 1 (to be codified as an amendment to Crim. Proc. Code art. 49.25, § 11(a)). However, the amended law applies only to a request for information that the governmental body receives on or after September 1, 2013, the effective date of the amendment. *Id.* § 2. A request for information received before the effective date of the amendment is governed by the law in effect on the date the governmental body received the request. *Id.* Here, the medical examiner's office received the request on July 26, 2013. You state the information you have marked consists

of an autopsy photograph. Because neither exception to confidentiality applies to the information in this instance, the submitted autopsy photograph you have marked is confidential under section 11 of article 49.25 of the Code of Criminal Procedure and must be withheld from disclosure in conjunction with section 552.101 of the Government Code.

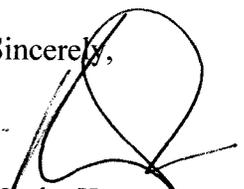
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We note the purpose of section 552.130 is to protect the privacy interests of individuals. The right to privacy is a personal right that lapses at death and, therefore, may not be asserted solely on behalf of a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex.App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Upon review, we find no portion of the submitted information consists of the motor vehicle record information of a living individual. Accordingly, no portion of the submitted information may be withheld under section 552.130 of the Government Code.

In summary, the medical examiner's office must withhold the autopsy photograph you have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The medical examiner's office must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 501668

Enc. Submitted documents

c: Requestor
(w/o enclosures)