



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2014

Mr. Steven Arellano
El Paso Assistant County Attorney
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2014-05966

Dear Mr. Arellano:

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# 523769

The El Paso Office of the Medical Examiner (the "medical examiner's office") received a request for the file pertaining to a specified person. You inform us you have released some of the requested information to the requestor. You also inform us you have withheld autopsy photographs pursuant to section 11 of article 49.25 of the Code of Criminal Procedure.¹ 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. Section 552.101 encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. 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

¹Section 11(b) of article 49.25 of the Code of Criminal Procedure permits a governmental body to withhold a photograph or x-ray taken during an autopsy without requesting a decision from this office. Crim. Proc. Code art. 49.25, § 11(b).

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 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. *See* Open Records Decision Nos. 487 at 3-4 (1987), 370 at 2 (1983), 343 at 1 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 at 1 (1990). Upon review, we find the information in Attachment B constitutes medical records. Accordingly, the medical examiner's office must withhold Attachment B under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as section 773.091 of the Health and Safety Code, which provides in relevant part:

(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). Except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and may

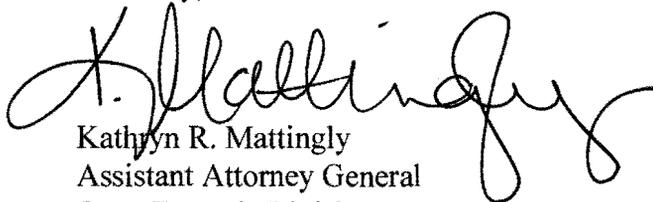
only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find Attachment C consists of an EMS record subject to chapter 773. Thus, with the exception of the information subject to section 773.091(g), the medical examiner's office must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

In summary, the medical examiner's office must withhold Attachment B under section 552.101 of the Government Code in conjunction with the MPA. With the exception of the information subject to section 773.091(g), the medical examiner's office must withhold Attachment C under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety 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.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 523769

Enc. Submitted documents

c: Requestor
(w/o enclosures)