



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2014

Mr. Tim Wyatt  
Public Information Officer  
Collin County  
2300 Bloomdale Road, Suite 4154  
McKinney, Texas 75071

OR2014-16379

Dear Mr. Wyatt:

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# 536312.

The Collin County Medical Examiner's Officer (the "medical examiner's office") received a request for any and all records pertaining to the death investigation of a named individual. You state you will release a portion of the requested information to the requestor. You state the medical examiner's office will withhold the requested autopsy photographs without requesting a decision from our office pursuant to subsection 11(b) of article 49.25 of the Code of Criminal Procedure.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform our office the medical examiner's office is withholding copies of the deceased individual's driver's license pursuant to section 552.130(c) of the Government Code. Section 552.130(c) allows a governmental body to redact the information described in section 552.130(a) of the Government Code without the necessity of seeking a decision

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<sup>1</sup>Section 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 ruling from this office. Crim. Proc. Code art. 49.25, § 11(b).

from this office under the Act.<sup>2</sup> Gov't Code § 552.130(c). However, section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 (1981). Thus, section 552.130 is not applicable to the deceased individual's driver's license, and the medical examiner's office may not withhold it on that basis. You also inform our office the medical examiner's office is redacting e-mail addresses under section 552.137 of the Government Code, pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a government body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We also note the purpose of section 552.137 is to protect the privacy interests of individuals, and because the right of privacy lapses at death, the e-mail address of a deceased individual may not be withheld under section 552.137. *See Moore*, 589 S.W.2d at 497. Therefore, the medical examiner's office may not withhold the deceased individual's e-mail address under section 552.137.

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 of the Government Code encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. 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

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<sup>2</sup>Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130.

<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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.

Occ. Code § 159.002(a)–(c). 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 and information obtained from those records. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office also has 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. *Id.* § 159.001(3). Under this definition, a deceased person cannot be a patient under section 159.002 of the MPA. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). 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 no portion of the submitted information constitutes medical records. Accordingly, the medical examiner's office may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with the MPA. As you raise no other exceptions, the submitted information must be released.

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](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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/ac

Ref: ID# 536312

Enc. Submitted documents

c: Requestor  
(w/o enclosures)