



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2016

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

OR2016-22678

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# 635933.

The Nueces County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to a specified autopsy, including: (1) emergency medical technician records; (2) hospital medical records; (3) body worn camera videos; and (4) the printout of the Taser computer chip. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted dashboard camera recording is not responsive to the instant request for information because it does not consist of the requested information pertaining to the specified autopsy. This ruling does not address the public availability of any information that is not responsive to the request and the medical examiner's office is not required to release such information in response to this request.

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<sup>1</sup>We note the medical examiner's office did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Next, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor does not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a "failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information." *Id.*

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 protected by section 773.091 of the Health and Safety Code, which provides in 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). The remaining responsive information contains records made and maintained by emergency medical services (“EMS”) personnel. Upon review, we find section 773.091 is applicable to the information in Exhibit C. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the medical examiner’s office must withhold the EMS records in 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 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:

(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.

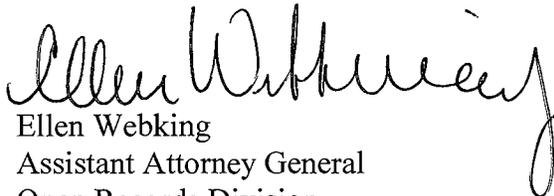
*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find most of the information in Exhibit B constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient’s medical records. Accordingly, the medical examiner’s office must withhold this information under section 552.101 of the Government Code in conjunction with the MPA. However, we find the medical examiner’s office has not established the remaining information in Exhibit B, which we have marked for release, consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. Thus, the remaining information we have marked for release is not confidential under the MPA, and the medical examiner’s office may not withhold it under section 552.101 on that ground.

In summary, as the requestor does not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. With the exception of the information subject to section 773.091(g), the medical examiner's office must withhold the EMS records in Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. Except for the information we have marked for release, the medical examiner's office must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with the MPA. The medical examiner's office must release the remaining responsive 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 635933

Enc. Submitted documents

c: Requestor  
(w/o enclosures)