



November 29, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR99-3412

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129725.

The Travis County District Attorney's Office (the "district attorney") received a request for its file on a particular capital murder case. You state that the district attorney has released to the requestor all court-filed records. You assert that the requested information is excepted from disclosure based on sections 552.101 and 552.108 of the Government Code. You have submitted representative samples of the information at issue.¹

You assert that portions of the requested information are confidential under article 4495b, section 5.08 of Vernon's Texas Civil Statutes. Some of the records at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Section 5.08 of the MPA provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are 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.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 598 (1990). Thus, the medical records may be released only in accordance with the MPA.

You have identified portions of the requested information as mental health records. "Communications between a patient and a professional and records of the identity, diagnosis, evaluation or treatment of a patient that are created or maintained by a professional" are made confidential by section 611.002 of the Health and Safety Code. A "professional" is a person authorized to practice medicine in any state or nation, a person licensed or certified by this state to diagnose, evaluate or treat any mental or emotional condition or disorder or a person the patient reasonably believes is authorized, licensed or certified to diagnose, evaluate or treat any mental or emotional condition. Health & Safety § 611.001. Two provisions in chapter 611 of the Health and Safety Code, sections 611.004 and 611.0045, authorize the release of mental records under certain circumstances to certain individuals. Assuming the submitted records were created or maintained by a professional as defined in section 611.001, the district attorney must not release this information to the requestor unless authorized to do so under chapter 611.

You raise concern for the privacy rights of the surviving family members of the victims. You did not mark any information as private, but say that "the common-law right of privacy protects information regarding an individual's emotional and mental distress, including the distress of the type discussed in the enclosed incident reports." We have reviewed the incident report. We find that the common-law right to privacy protects a portion of the report and have marked the report accordingly. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see* Open Records Decision No. 611 (1992) at 1.

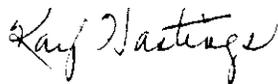
You assert that information you describe as prosecutorial work product is excepted from disclosure based on section 552.108(a)(3), (b)(3). Section 552.108(a)(3) reads as follows

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] of it is information that (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

We have reviewed the submitted information. We conclude that the district attorney may withhold the information from the requestor based on section 552.108(a)(3).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/ljp

Ref.: ID# 129725

encl. Submitted documents

cc: Mr. Michael B. Charlton
3200 Southwest Freeway, Suite 1120
Houston, Texas 77027
(w/o enclosures)