



March 16, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-1036

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145042.

The Texas Department of Public Safety (the "department") received a request for information involving a police pursuit and fatal shooting that occurred on April 15, 2000. You state you will be making the autopsy report and other previously released information available to the requestor, but that the remainder of the requested information is excepted from disclosure under section 552.103(a) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The information at issue constitutes a completed investigation. Section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You raise section 552.103(a) of the Government Code. Our office has previously concluded that section 552.103 is a discretionary exception. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation, and does not itself make information confidential). We do not believe that this exception "expressly [makes] information confidential under other law." Gov't Code § 552.022. Therefore you may not withhold the submitted information under section 552.103(a) of the Government Code.

However, some of the responsive information is confidential by law, and is, therefore, not subject to release under section 552.022. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an

agency of this state. Thus, the department must withhold the marked vehicle identification and license plate numbers found within the released documents under section 552.130 of the Government Code.

Lastly, we note that some of the responsive documents include medical records. Medical records are subject to section 159.002 of the Occupations Code, known as the Medical Practices Act ("MPA"). Section 159.002 of the MPA provides:

(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.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1998). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). We note that the requestor represents the deceased whose MPA records are at issue. Section 159.004(5) of the MPA allows disclosure of confidential information to "a person who has the written consent of the patient or other person authorized to act on the patient's behalf." Consent for the release of confidential information must be in writing and signed by the patient or, if the patient is deceased, a personal representative of the patient. Occ. Code § 159.005(a)(1), (5). We have marked the medical records that you may release only in accordance with the MPA.

In summary, section 552.022 of the Government Code requires the department to release most of the responsive information. However, the department must withhold any vehicle identification and license plate numbers found within the submitted documents. Medical records may not be released except in accordance with the MPA.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

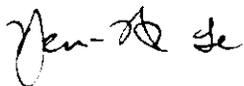
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 145042

Encl. Marked documents

cc: Mr. David T. Bright
Harris & Watts, P.C.
555 North Carancahua, Suite 1400
Corpus Christi, Texas 78478-0801
(w/o enclosures)