



July 16, 2002

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2002-3856

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165695.

The Office of the Medical Examiner for Travis County (the "county") received a request for "copies of all approvals granted by your office to eye bank officials for removal of corneal tissue under [s]ection 693.012 of the Texas Health and Safety Code." The requestor seeks any such approvals granted on January 1, 2001 or later. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered the comments submitted to this office by the requestor. *See* Gov't Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).

You first argue that the requested "Authorization for Removal of Corneal Tissue" is a medical record that is made confidential in this instance by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 provides:

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<sup>1</sup>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). 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

(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.

The MPA defines "patient" as "a person who, to receive medical care, consults with or is seen by a physician." Occ. Code § 159.001. We do not believe that a deceased individual can be a "patient" as defined by section 159.001 of the Occupations Code since a deceased person is not seen by a physician to receive medical care. In other words, the MPA protects only the medical records of patients who were alive at the time the records were created. The submitted "Authorization for Removal of Corneal Tissue" was created pursuant to section 693.012 of the Health and Safety Code, which states that "[o]n a request from an authorized official of an eye bank for corneal tissue, a justice of the peace or medical examiner may permit the removal of corneal tissue if: (1) *the decedent* from whom the tissue is to be removed died under circumstances requiring an inquest by the justice of the peace or medical examiner; . . . ." Health and Safety Code § 693.012(1) (emphasis added). Therefore, the submitted authorization form you seek to withhold under the MPA was created after the death of the individual from whom the corneal tissue was to be taken. Accordingly, we conclude that the submitted "Authorization for Removal of Corneal Tissue" is not a medical record for purposes of the MPA, and thus, you may not withhold this information under the MPA.

We next address your argument that the submitted information is made confidential under common-law privacy. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note, however, that an individual's privacy rights lapse at that person's death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded") (quoting Restatement of Torts 2d); *see generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). Therefore, because the submitted authorization pertains to a deceased individual, we conclude that it is not made confidential under common-law privacy. As you make no other arguments against disclosure, the requested information must be released to the requestor.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 165695

Enc. Submitted documents

c: Mr. Ralph K. M. Haurwitz  
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(w/o enclosures)