



September 19, 2002

Ms. Larissa T. Roeder  
Assistant District Attorney  
Dallas County  
133 North Industrial Boulevard, L.B. 19  
Dallas, Texas 75207-4399

OR2002-5289

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168894.

The Dallas County District Attorney's Office (the "district attorney") received a request for a named individual's medical records. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The district attorney asserts that the requested information is confidential under the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. The MPA governs the disclosure of medical records. 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 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). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See id.* §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See Open Records Decision No. 598 (1991)*. Upon review of the submitted information, we agree that it comes within the scope of the MPA. The district attorney does not inform us that the disclosure of this information in this instance would be consistent with the authorized purposes for which the information was first obtained. We therefore conclude that the requested information must be withheld from the requestor 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 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large, looped initial "J" and a long, sweeping underline.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 168894

Enc: Submitted documents

c: Mr. Lee Murphy  
1122 Meadow Run Drive  
Duncanville, Texas 75138  
(w/o enclosures)