



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 8, 2003

Mr. James L. Hall  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2003-0167

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174694.

The Texas Department of Criminal Justice (the "department") received a request for information relating to an inmate who died in the department's custody. You state that you have provided the requestor with information as to where to obtain the autopsy report and the deceased inmate's medical records. You also inform us that you have released the front page of an Investigator's Report of Custodial Death.<sup>1</sup> You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

You state that the submitted information includes medical records. The disclosure of medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

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<sup>1</sup>We note that article 49.18(b) of the Code of Criminal Procedure requires law enforcement agencies to complete custodial death reports and file them with the attorney general, who is required to make the report available to any interested party, except for any portion that the attorney general determines is privileged. Under article 49.18(b) in conjunction with a directive issued by this office, section one of a custodial death report filed with this office is public information. All remaining portions of the report, including all attachments, are deemed privileged and must be withheld from the public. *See* Open Records Decision No. 521 (1989). It is not clear to this office whether the submitted Investigator's Report of Custodial Death was prepared in compliance with article 49.18(b).

(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). 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). We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). We have marked the submitted information that is governed by the MPA. We note that the requestor may have a right of access to this information. *See* Occ. Code §§ 159.002(c), .003, .004, .005. Otherwise, the department must not release the information that is governed by the MPA.

You claim that the rest of the submitted information is excepted from disclosure under section 552.134 of the Government Code. Section 552.134 relates to inmates of the department. This exception states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides that notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" These eight categories of information include

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

You state that the submitted information relates to an inmate of the department who died in the department's custody. Based on your representation and our review of the submitted information, we agree that section 552.134(a) is applicable in this instance. We note, however, that section 552.029(8) requires the department to disclose basic information about the death of an inmate in custody. We also note that some of the submitted documents, which we have marked, relate to alleged crimes involving an inmate. The department also must disclose basic information about those incidents under section 552.029(8). The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The department must withhold the rest of the submitted information under section 552.134 of the Government Code.

In summary, the department must not release the information that is governed by the Medical Practice Act unless the requestor has a right of access to that information under the MPA. The department must release basic information regarding the death of an inmate in custody and an alleged crime involving an inmate under section 552.029(8) of the Government Code. The department must withhold the rest of the submitted information under section 552.134. As we are able to make this determination, we need not address the department's other arguments against disclosure.<sup>2</sup>

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.

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<sup>2</sup>We note that section 552.108 of the Government Code does not except from disclosure "basic information about an arrested person, an arrest, or a crime." See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

*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).

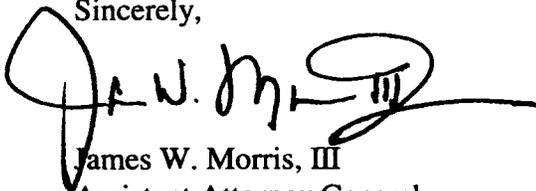
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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', with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 174694

Enc: Marked documents

c: Ms. Margarita C. Galvan  
27 County Road 103, Space 115  
Santa Fe, New Mexico 87506  
(w/o enclosures)