



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2006

Mr. Richard L. Bilbie  
Assistant District Attorney  
Cameron County District Attorney  
974 East Harrison  
Brownsville, Texas 78520

OR2006-07030

Dear Mr. Bilbie:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 253018.

The Cameron County District Attorney (the "district attorney") received a request for information pertaining to the arrest and custodial death of a named individual from a representative of the decedent's family. You state that you have released some of the requested information but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that the submitted information includes documents that have been filed with a court. Documents filed with a court are generally a matter of public record under section 552.022(a)(17) of the Government Code and may not be withheld from disclosure unless confidential under other law. *See* Gov't Code § 552.022(a)(17); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with court are public documents and must be released). Although you assert this information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions under the Act and are not other laws that make information confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas*

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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.

*Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n. 5 (2000) (discretionary exceptions generally). Thus, the district attorney must release the court-filed information, which we have marked, pursuant to section 552.022(a)(17).

Next, you note that the remaining information includes the deceased's medical records. Access to medical records is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides as follows:

(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.

Occ. Code. § 159.002(b), (c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002, 004; ORD 598. In this case, the patient at issue is deceased. Medical records pertaining to a deceased individual may be released only on the signed consent of the personal representative of the deceased. Occ. Code § 159.005(a)(5). The consent must specify (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. *Id.* §§ 159.004, .005. Section 159.002(c) 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. 565 at 7 (1990). The submitted medical records, which we have marked, may be released only as provided under the MPA.<sup>2</sup>

We now turn to your arguments for the remaining submitted information. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental

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<sup>2</sup>Because the requestor is the representative of the family of the individual to whom the submitted medical records pertain, he may have a right of access to these records. In any event, these medical records may only be released if the MPA permits the district attorney to do so.

body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the submitted information relates to an active criminal investigation. Based upon your representation and our review, we determine that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime, and we therefore agree that section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district attorney may withhold the remaining submitted information from disclosure pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007. As our ruling on this issue is dispositive, we need not address your other claims regarding this information except to note that basic information is generally not excepted under section 552.103. *See* Open Records Decision No. 597 (1991).

Finally, we address your claim that the decedent's social security number is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You do not cite to any specific law, and we are not aware of any, that makes the social security number of a deceased individual confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating that information shall not be released to public). Therefore, the district attorney may not withhold the decedent's social security number under section 552.101.

In summary, the court-filed document, which we have marked, must be released pursuant to section 552.022(a)(17) of the Government Code. The submitted medical records, which we have marked, may only be released in accordance with the MFA. Other than basic information that must be released, the remaining submitted information may be withheld under section 552.108(a)(1) of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/sdk

Ref: ID# 253018

Enc. Submitted documents

c: Mr. Norton A. Colvin, Jr.  
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