



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2009

Mr. J. O. Khayan Williams  
Assistant District Attorney  
Tarrant County Criminal District Attorney's Office  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2009-01459

Dear Mr. Williams:

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# 334041.

Tarrant County (the "county") received a request for information relating to an inmate who died in the custody of the county jail. You state that neither the Tarrant County Criminal District Attorney's Office nor the Tarrant County Sheriff's Department holds or has access to certain medical records or audio or video recordings.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that with the exception of any portion of the custodial death report that the Office of the Attorney General ("OAG") determines is privileged, the OAG shall make the report public. *See* Crim. Proc. Code art. 49.18(b). In 2003, the OAG revised the format of the custodial death report to consist of two pages and an attached summary of how the death occurred. The OAG has determined

---

<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

that the two-page report and summary must be released to the public but that any other documents submitted with the revised report are confidential under article 49.18(b). However, article 49.18(b) does not make confidential all information held by a local law enforcement agency simply because the information is also included in extraneous documents attached to a custodial death report submitted to the OAG. If a governmental body receives a request for information otherwise generated or maintained by the law enforcement agency as part of its ordinary responsibilities, those documents may be withheld only if one of the Act's exceptions or another specific law protects them. *See* Open Records Decision No. 521 at 7 (1989). In this instance, you have submitted a custodial death report with a summary of how the death occurred. Although you seek to withhold that information under section 552.103 of the Government Code, we note that the exceptions to disclosure found in the Act are generally not applicable to information that another statute makes public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the county must release the custodial death report and summary, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

We also note that section 552.022 of the Government Code is applicable to some of the submitted information. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Section 552.022(a)(17) provides for required disclosure of "information that is also contained in a public court record[.]" *Id.* § 552.022(a)(17). In this instance, the submitted information includes completed reports made of, for, or by the county that are subject to section 552.022(a)(1) and a court document that is subject to section 552.022(a)(17). Although you also seek to withhold the completed reports and the court document under section 552.103, that section is a discretionary exception that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022(a)(1) or section 552.022(a)(17). Therefore, the county may not withhold the information that is subject to section 552.022(a)(1) and section 552.022(a)(17) under section 552.103. However, we will determine whether any of that information is protected by sections 552.101 and 552.130 of the Government Code, which are confidentiality provisions for the purposes of section 552.022(a)(1). We also will address the county's exceptions to disclosure of the information that is not subject to section 552.022.

Section 552.103 of the Government Code provides in part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body bears the burden of providing relevant facts and documentation sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold under this exception. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture."<sup>2</sup> *Id.* You contend that the requestor has "placed [the county] on notice of [a] potential negligence claim" by the next friend of a beneficiary of the deceased inmate's estate. We find, however, that the requestor has merely advised the county of his representation of the potential claimant in connection with his request for information. Therefore, having considered your arguments, we find that you have not demonstrated that the county reasonably anticipated litigation on the date of its receipt of this request for information. *See* Gov't Code § 552.103(c); ORD 452 at 4; *see also* Open Records Decision No. 331 at 1-2 (1982) (mere chance of litigation not sufficient to trigger statutory predecessor to Gov't Code § 552.103). We therefore conclude that the county may not withhold any of the submitted information under section 552.103 of the Government Code.

---

<sup>2</sup>Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Next, we address your claims 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. This exception encompasses information that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(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). We also have determined that the MPA ordinarily encompasses only records created either by a physician or by someone acting under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). However, when a file is created as the result of a hospital stay, we have concluded that 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, created or maintained by a physician, for purposes of the MPA. *See* Open Records Decision No. 546 (1990). We note that section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. *See* Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a "patient" under section 159.002 of the MPA. Thus, section 159.002 is applicable only to the medical records of a person who was alive at the time of the diagnosis, evaluation, or treatment to which the records pertain.

After the death of a patient, medical records may be released only on the signed written consent of the decedent's personal representative. *See id.* § 159.005(a)(5). The consent must specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See id.* §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked medical records that the county must withhold under section 159.002 of the MPA, unless the deceased inmate's personal representative provides the county with written consent for release of those records that meets the requirements of section 159.005(a)(5).

The submitted records also include information relating to the provision of emergency medical services ("EMS"). Section 773.091 of the Health and Safety Code is applicable to that information and provides in part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

Health & Safety Code § 773.091(b)-(c). Section 773.091 further provides, however, that "[t]he privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). We have marked EMS information that is confidential under section 773.091, except as specified by 773.091(g). We note that such information may be released to "any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf." *Id.* § 773.092(e)(4). When the patient is deceased, the patient's personal representative may consent to the release of the patient's records. *Id.* § 773.093(a); *see* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of Health & Safety Code § 773.093). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. Health & Safety Code § 773.093(a). Therefore, the county must withhold the marked EMS information under section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the deceased inmate's personal representative provides the county with written consent for release that meets the requirements of section 773.093(a). *See id.* §§ 773.092, .093; ORD 632.

The submitted information also includes mental health records that are confidential under section 611.002 of the Health and Safety Code. This section provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

*Id.* § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). We have marked mental health records that the county must withhold under section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045. *See* Health and Safety Code § 611.004(a)(5) (professional may disclose confidential information to patient’s personal representative if patient is deceased).

The submitted records also contain fingerprints whose public availability is governed by sections 560.001, 560.002, and 560.003 of the Government Code.<sup>3</sup> Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, as an attorney for a representative of the deceased inmate’s estate, the requestor has a right of access to the inmate’s fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, the county must release the fingerprints to this requestor pursuant to section 560.002 of the Government Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center (the “NCIC”) or the Texas Crime Information Center (the “TCIC”) is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”<sup>4</sup> Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal

---

<sup>3</sup>We note that former sections 559.001, 559.002, and 559.003 of the Government Code were renumbered as sections 560.001, 560.002, and 560.003 by the Seventy-eighth Legislature. *See* Act of May 20, 2003, 78<sup>th</sup> Leg., R.S., ch. 1275, § 2 (78), 2003 Tex. Gen. Laws 4140, 4144.

<sup>4</sup>We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2).

regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We note because the laws that govern the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. We have marked CHRI that the county must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.<sup>5</sup>

You also raise section 552.101 in conjunction with constitutional and common-law privacy. Constitutional privacy protects two types of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that the United States Supreme Court has recognized. *See Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981); ORD 455 at 3-7. The second type of privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined that a compilation of a private individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction

---

<sup>5</sup>We note that an individual's own CHRI may be obtained from the DPS. *See* Gov't Code § 411.083(b)(3).

between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

In this instance, most of the remaining information is related to the deceased inmate. We note that privacy is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the deceased inmate has no right to privacy. You contend that although she is deceased, the release of information relating to the inmate could be embarrassing to her family. The United States Supreme Court has concluded that surviving family members can have a privacy interest in information relating to a deceased relative. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004). In this instance, however, the requestor is an attorney for a family member. As such, the requestor would have a special right of access under section 552.023 of the Government Code to any information that the county might be required to withhold from the public to protect the privacy interests of the deceased inmate's family.<sup>6</sup> *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, the county may not withhold any of the remaining information relating to the deceased inmate on privacy grounds. Nevertheless, the remaining records also contain information relating to other inmates that is intimate or embarrassing and not a matter of legitimate public interest. The county must withhold that information, which we have marked, under section 552.101 in conjunction in common-law privacy.

The remaining records also contain information relating to the deceased inmate's visitors. This office also has applied privacy to protect certain information related to incarcerated individuals and their correspondents and visitors. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976), we held that those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure" and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. *See* ORD 185. Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. The information at issue in Open Records Decision No. 185 consisted of the identities of individuals who had corresponded with inmates. The rights of those individuals to anonymity was found to outweigh the public's interest in the information. *Id.*; *see also* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Therefore, the visitor information that we have marked also must be withheld on privacy grounds under section 552.101.

---

<sup>6</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

You also raise section 552.107 of the Government Code. Section 552.107(1) protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim the attorney-client privilege for “any legal advice and/or written communications made to [your office’s] client[.]” You have not demonstrated, however, and it does not otherwise appear to this office that the remaining records contain any such information. We therefore conclude that the county may not withhold any of the remaining information under section 552.107(1) of the Government Code.

Lastly, we address your claims under sections 552.130 and 552.147 of the Government Code. Section 552.130 excepts from public disclosure information relating to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Because this exception protects personal privacy, the county may not withhold any driver's license, motor vehicle, or personal identification information relating to the deceased inmate under section 552.130. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489; ORD 272. Moreover, the remaining records do not contain any information relating to a living individual that falls within the scope of this exception. We therefore conclude that the county may not withhold any of the remaining information under section 552.130 of the Government Code.

In connection with your claim under section 552.130, you also cite to section 521.052 of the Transportation Code, which states that "[e]xcept as provided by Sections 521.045, 521.046, 521.049(c), 521.050, and 601.022, and by Chapter 730 [of the Transportation Code], the [Texas Department of Public Safety (the "DPS")] may not disclose information from the department's files that relates to personal information, as that term is defined by Section 730.003 [of the Transportation Code]." Transp. Code § 521.052. Thus, section 521.052 specifically regulates the disclosure of information by the DPS. Therefore, because the submitted Texas driver's license information is maintained by the county, and not the DPS, section 521.052 is not applicable in this instance.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>7</sup> Gov't Code § 552.147(a). Thus, the deceased inmate's social security number may not be withheld under this exception. Moreover, the remaining information does not include the social security number of any living individual. We therefore conclude that the county may not withhold any of the remaining information under section 552.147 of the Government Code.

In summary: (1) the custodial death report must be released pursuant to article 49.18(b) of the Code of Criminal Procedure; (2) the medical records must be withheld under section 159.002 of the MPA, unless the deceased inmate's personal representative provides the county with written consent for release that meets the requirements of section 159.005(a)(5); (3) the EMS information must be withheld under section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the deceased patient's personal representative provides the county with written consent for release that

---

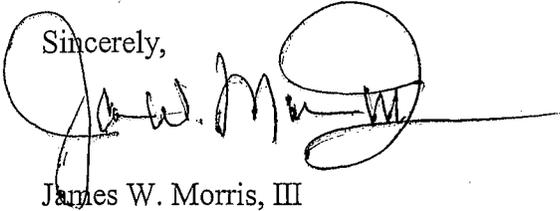
<sup>7</sup>We note that section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

meets the requirements of section 773.093(a); (4) the mental health records must be withheld under section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045; (5) the CHRI must be withheld under federal law and subchapter F of chapter 411 of the Government Code; and (6) the information relating to the other inmates and the deceased inmate's visitors must be withheld under section 552.101 of the Government Code in conjunction with common-law and constitutional privacy. The rest of the submitted information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

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

JWM/cc

Ref: ID# 334041

Enc: Submitted documents

c: Requestor  
(w/o enclosures)