



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 17, 2009

Mr. Steven M. Kean
Deputy City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR2009-03474

Dear Mr. Kean:

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# 341760.

The Tyler Police Department (the "department") received a request for police, autopsy, and toxicology reports relating to a deceased individual. You state that the police and autopsy reports either have been or will be released. We understand you to claim that the toxicology report is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and 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." 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

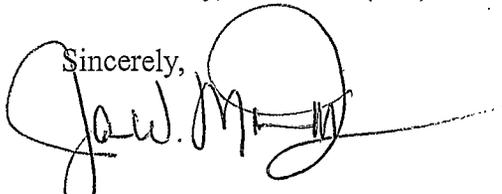
Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). You believe that the MPA may be applicable to the submitted toxicology report. We note that the information in question is related to the results of tests concerning postmortem toxicology. 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 id.* § 159.001(3). Under this definition, a deceased individual 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. Therefore, the submitted records of postmortem tests are not confidential under the MPA and may not be withheld from the requestor on that basis under section 552.101 of the Government Code. As you claim no other exception to disclosure, 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, 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,



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

JWM/cc

Ref: ID# 341760

Enc: Submitted documents

c: Requestor
(w/o enclosures)