



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2009

Ms. Patricia Fleming  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2009-06068

Dear Ms. Fleming:

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# 342302.

The Texas Department of Criminal Justice (the "department") received a request for all inmate, medical, and criminal records pertaining to a named deceased inmate. You state that you will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains medical records. 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 section encompasses information protected by other statutes. Access to medical records is governed by the Medical Practices Act (the "MPA"), Occ. Code §§151.001-165.160. 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.

*Id.* § 159.002(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Medical records must be released on signed, written consent, provided that the consent specifies (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. *See id.* §§ 159.004. When a patient is deceased, as is the case here, medical records pertaining to the deceased patient may only be released upon the signed consent of the deceased's personal representative. *See id.* § 159.005(a)(5). 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). 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 have marked the medical records in the documents submitted by the department that are confidential under the MPA. We note that as the daughter of the deceased inmate whose medical records are at issue, the requestor may have a right of access to that inmate's marked medical records under the MPA. *See id.* § 159.005(a)(2). The marked medical records may only be released in accordance with the MPA. *See* ORD 598.

Next, you assert that the remaining information is excepted from disclosure under section 552.134 of the Government Code, which relates to information about inmates of the department. Section 552.134 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

The remaining documents consist of information about a deceased inmate who was confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Although the individual to whom the submitted information pertains is deceased, we agree that section 552.134 is applicable to information that relates to the

deceased individual as an inmate of the department. Thus, the department must withhold the remaining information under section 552.134(a) of the Government Code.

In summary, the medical records we have marked may only be released in accordance with the MPA. The department must withhold the remaining information under section 552.134(a) of the Government Code.

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/jb

Ref: ID# 342302

Enc. Submitted documents

c: Requestor  
(w/o enclosures)