



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 12, 2009

Ms. Christina R. Sanchez
Assistant County Attorney
El Paso County Attorney's Office
500 E. San Antonio, Room 503
El Paso, Texas 79901

OR2009-06414

Dear Ms. Sanchez:

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# 342839.

The El Paso County Medical Examiner's Office (the "medical examiner") received a request for information pertaining to the autopsy and investigation into the death of a named individual. You state that the medical examiner will release some information to the requestor. You also state that the medical examiner did not conduct an autopsy and, therefore, does not have any records responsive to that portion of the request.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. You raise section 81.203 of the Health and Safety Code, which provides that "[r]ecords of a health

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law.” Health & Safety Code § 81.203. We note that section 81.203 is located in the Communicable Disease Prevention and Control Act, chapter 81, subchapter G of the Health and Safety Code. Subchapter G sets forth procedures for obtaining court orders for the management of persons with communicable diseases. *See id.* §§ 81.001, .151 (providing for an application for court order for the management of persons with communicable diseases). You do not explain, nor can we discern, how any of the information at issue consists of records of a health care facility that pertain to a patient who was ordered by the court to receive care for a communicable disease under chapter 81 of the Health and Safety Code. Thus, we find that you have failed to demonstrate that section 81.203 of the Health and Safety Code is applicable to the information at issue and none of it may be withheld on that basis.

Next, you claim that a portion of the submitted information is subject to the Medical Practices Act (the “MPA”). Section 552.101 of the Government Code also encompasses the the MPA, which governs access to medical records. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

(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 concluded 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). The MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” *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. Medical records must be released upon the patient’s 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, .005. After the death of a patient, medical records may be released only on the signed written consent of the deceased individual's personal representative. *See id.* § 159.005(a)(5). 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). The submitted information pertains to a deceased individual. We have marked medical records that the medical examiner must withhold under the MPA, unless the medical examiner receives written consent for release of those records that complies with section 159.005(a)(5) of the MPA. However, we find that the remaining information does not constitute medical records and it may not be withheld under section 552.101 based on the MPA.

Next, you claim that Attachment D consists of emergency medical service ("EMS") records that are subject to chapter 773 of the Health and Safety Code, which is also encompassed by section 552.101 of the Government Code. Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code. *See* Open Records Decision No. 598 (1991). Section 773.091 provides in part the following:

(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.

...

(g) The 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.

Health & Safety Code § 773.091(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and, therefore, may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-773.094. We note that this 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 also* 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). Thus, the medical examiner must withhold the marked EMS information under section 773.091, except

as specified by section 773.091(g), unless the deceased individual's personal representative provides the medical examiner with written consent that meets the requirements of section 773.093(a). *See id.* §§ 773.092, .093; ORD 632.

In summary, the medical records we have marked may only be released in accordance with the MPA. Except for the information which must be released pursuant to section 773.091(g), the medical examiner may only release the EMS records at issue upon receipt of proper consent under section 773.093(a) of the Health and Safety Code. The remaining information must be released to the requestor.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 342839

Enc. Submitted documents

c: Requestor
(w/o enclosures)