



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2009

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2009-11833

Dear Ms. DeLuca:

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# 354424.

The Bryan Police Department (the "department") received a request for a specific incident report and information pertaining to a deceased individual. You state you have released the accident report, photographs, and witness statements to the requestor. 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 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:

- (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.

Occ. Code § 159.002(a)-(c). 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). You state the blood test results sought by the requestor were "obtained from a blood sample drawn under the supervision of a physician." We understand you to claim the MPA may be applicable to the submitted toxicology reports. We note that a portion of 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. In addition, we find the remaining information does not consist of a communication between a physician and a patient, nor is it a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician. Accordingly, no portion of the submitted information is subject to the MPA.

We note the submitted information contains a driver's license number. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"<sup>1</sup> Gov't Code § 552.130 (a)(1). The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. As you raise no further exceptions against disclosure, the remaining information must be released.

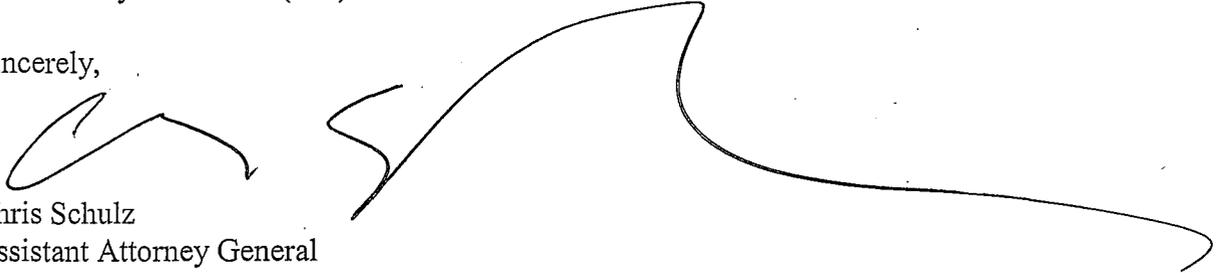
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

---

<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 354424

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)