



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2009

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2009-17329

Dear Ms. Lentz:

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# 363523.

The Williamson County Sheriff's Office (the "sheriff") received a request for all records obtained through grand jury subpoenas regarding a specified case. You claim the submitted grand jury subpoenas and medical records are not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

You assert the submitted grand jury subpoenas and medical records constitute grand jury information that is not subject to disclosure under the Act. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and is, therefore, not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and, therefore, are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information is also

held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. The information at issue reflects it was gathered by the sheriff for its own use in the sheriff's investigation regarding the death of the individual whose medical records are at issue. Thus, we find the submitted information obtained by grand jury subpoenas is held in the sheriff's own capacity in the course of official business and is, therefore, subject to the Act. *See* Gov't Code § 552.002 (providing that information collected, assembled, or maintained in connection with the transaction of official business by a governmental body is "public information"). Accordingly, we will address the Act's applicability to 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. You raise section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). In construing article 20.02 of the Code of Criminal Procedure, the types of "proceedings" Texas courts have generally stated are secret consist of testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.); *see also Stern v. State*, 869 S.W.2d 614 (Tex. App.—Houston [14th Dist] 1994, no writ) (stating anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret). Although you claim the submitted grand jury subpoenas and medical records are subject to article 20.02, you have not demonstrated any of the information reveals grand jury testimony or deliberations of the grand jury. We, therefore, conclude the sheriff may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure.

Some of the submitted information consists of medical records subject to the Medical Practices Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 552.101 also encompasses the MPA. 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). 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). This office has also determined when a file is created as the result of a hospital stay, 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 that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990).

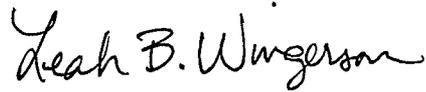
We have marked the information that constitutes medical records subject to the MPA. We note, however, this information pertains to a deceased individual, and the requestor is an attorney representing the deceased individual's husband. Medical records pertaining to a deceased patient may only be released upon the signed consent of the deceased's personal representative. *See* Occ. Code § 159.005(a)(5). The consent must specify (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. *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). The requestor has provided an authorization to disclosure of health information signed by the decedent's husband. If the sheriff determines the requestor has provided proper consent in accordance with the MPA, the marked medical records must be released. If the sheriff determines the requestor has not provided proper consent, the marked medical records must be withheld under section 552.101 of the Government Code in conjunction with the MPA. As you have claimed no other exceptions to 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.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 363523

Enc. Submitted documents

c: Requestor
(w/o enclosures)