



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2011

Ms. Barbara Corley  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2011-09361

Dear Ms. Corley:

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# 422284.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a specified investigation of a use of force. You state some of the requested information has been released. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information is a completed investigation made by the department; as such, the information is subject to disclosure under section 552.022(a)(1). You seek to withhold the submitted information under section 552.103 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d at 475-76; Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022(a)(1). Therefore, the department may not withhold any of the submitted information under section 552.103 of the Government Code. As section 552.134 of the Government Code, which you also claim, is a

confidentiality provision for purposes of section 552.022(a)(1), we will address your claim under section 552.134. We note sections 552.101 and 552.117 of the Government Code, which also are confidentiality provisions for purposes of section 552.022(a)(1), are applicable in this instance.<sup>1</sup> Accordingly, we also will address sections 552.101 and 552.117.

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 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). 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). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (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. *See* Occ. Code §§ 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). We have marked medical records pertaining to the requestor and an employee of the department that are confidential under the MPA. The marked medical records must be withheld under section 159.002 of the MPA unless the department receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

Next, we address your claim under section 552.134 of the Government Code, which is applicable to information relating to inmates and former inmates of the department. Section 552.134(a) provides as follows:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department]

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<sup>1</sup>This office will raise sections 552.101 and 552.117 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides in part:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

*Id.* § 552.029(8). You contend the remaining information falls within the scope of section 552.134. We note the information at issue pertains to an incident involving the use of force. The department must release basic information about a use of force pursuant to section 552.029. *See id.* For purposes of section 552.029(8), basic information includes the time and place of the incident, the names of inmates and department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Thus, those types of information must be released pursuant to section 552.029(8) and may not be withheld under section 552.134. We also note some of the remaining information at issue pertains to the propriety of the conduct of the department's employees. Such information does not constitute "information about an inmate" for purposes of section 552.134 and may not be withheld on that basis. We have marked information about an inmate the department must withhold under section 552.134 of the Government Code. We conclude the department may not withhold any of the remaining information under section 552.134.

Section 552.117(a)(3) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). The department must withhold the employee's social security number we have marked under section 552.117(a)(3) of the Government Code.

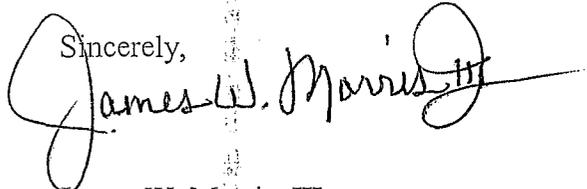
In summary, the department must withhold (1) the medical records we have marked under section 159.002 of the MPA unless the department receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA; (2) the

information we have marked under section 552.134 of the Government Code; and (3) the marked social security number under section 552.117(a)(3) of the Government Code. The department must release the rest of the submitted information.

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

Sincerely,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

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

JWM/em

Ref: ID# 422284

Enc: Submitted information

c: Requestor  
(w/o enclosures)