



February 10, 2015

Ms. Holly Lytle  
County of El Paso  
El Paso County Courthouse  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2015-02596

Dear Ms. Lytle:

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# 553394 (Request ID# CA-OP-14-607).

The El Paso County Medical Examiner's Office (the "medical examiner's office") received a request for five categories of information regarding a specified incident involving a named individual. You state the medical examiner's office has released some information. You claim 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, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

(a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not

be withheld, subject to a discretionary exception under [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11(a). You inform us some of the submitted photographs of the decedent's body were taken during an autopsy. Upon review, we find the photographs we have marked constitute autopsy photographs. You state neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, we find the medical examiner's office must withhold the photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, we find no portion of the remaining information at issue constitutes autopsy photographs, and the medical examiner's office may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses information protected by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides in relevant 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). Information that is 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). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find the information at issue constitutes medical records subject to the MPA. Accordingly, the medical examiner’s office must withhold the information you seek to withhold under section 552.101 of the Government Code in conjunction with the MPA.<sup>1</sup>

In summary, the medical examiner’s office must withhold the photographs we have marked under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The medical examiner’s office must withhold the information you seek to withhold under section 552.101 of the Government Code in conjunction with the MPA. The medical examiner’s office must release the remaining 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Ref: ID# 553394

Enc. Submitted documents

c: Requestor  
(w/o enclosures)