



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2015

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Civil Section
Bexar County
101 West Nueva Street, Seventh Floor
San Antonio, Texas 78205

OR2015-18481

Dear Ms. Haby:

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# 578131 (BCDA# ME15-0027).

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for a specified autopsy report, including any and all notes and photographs. 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. Section 552.101 encompasses information made confidential by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

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 Chapter 552, Government Code, except

that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, 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. You assert some of the submitted information consists of autopsy photographs. Upon review, we find no portion of the submitted information constitutes autopsy photographs, and the medical examiner's office may not withhold any of the submitted information 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 also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part, the following:

- (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.

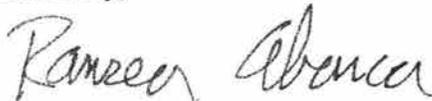
Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 at 3-4 (1987), 370 at 2 (1983), 343 at 1 (1982). Section 159.001 of the Occupations Code defines a "patient" as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001. Based on this definition, a deceased individual cannot be a "patient" under section 159.001. Thus, section 159.002 protects only the medical records of an individual who was alive at the time the records were created.

Upon review, we find none of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the medical examiner's office may not withhold any of the remaining information under section 552.101 in conjunction with the MPA. As you do not raise any other exceptions to disclosure, the submitted 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.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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 578131

Enc. Submitted documents

c: Requestor
(w/o enclosures)