



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2016

Mr. Kent A. Brown
Assistant County Attorney
Office of the County Attorney
County of Nueces
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2016-00679

Dear Mr. Brown:

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# 594710.

The Nueces County Medical Examiner's Office (the "medical examiner's office") received a request for the medical examiner and coroner's file for a named individual. You state the medical examiner's office has released some responsive information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs

¹We note the medical examiner's office failed to comply with its procedural obligations under the Act. See Gov't Code § 552.301(b), (e). However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue. *Id.* § 552.302.

release of medical records. *See* Occ. Code §§ 151.001-168.202. 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.

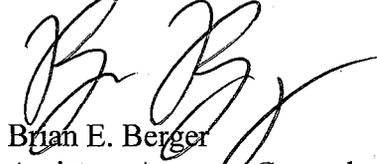
Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring 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 at 1 (1990). Section 159.001 of the MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” Occ. Code § 159.001(3). Under this definition, a deceased person is not a patient under section 159.002. Thus, the MPA is applicable only to records related to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain. Further, the administration of drug tests does not constitute medical care for purposes of section 159.002.

Upon review, we find the information we have marked is confidential under the MPA. Accordingly, the medical examiner's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However the remaining information either pertains to an individual who was deceased at the time of diagnosis, evaluation, or treatment, or consists of reports of the results of drug tests. Thus, we find you have not demonstrated any of the remaining information is confidential under the MPA. Therefore, the medical examiner's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis. As you raise no further 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 594710

Enc. Submitted documents

c: Requestor
(w/o enclosures)