



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2016

Ms. Crystal Koonce
Open Records
County of Williamson
508 South Rock Street
Georgetown, Texas 78626

OR2016-07350

Dear Ms. Koonce:

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# 603940.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for any medical records, test results, and notes pertaining to a named deceased individual. 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, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA 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.

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. 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). Section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. Occ. Code § 159.001 (3). Under this definition, a deceased person cannot be a patient under section 159.002 of the MPA. *See* ORDs 487, 370, 343. 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.

You state the submitted information was completed by jail medical officers under the supervision of the jail physician. Upon review, we find some of the information at issue consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created by a physician or someone under the supervision of a physician. Accordingly, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with the MPA. However, we find the remaining information does not consist of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or maintained by a physician, or someone under the supervision of a physician. Therefore, no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI;

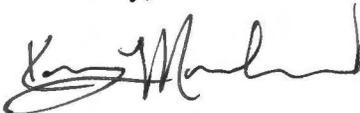
however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). We note, because the laws governing the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from the DPS or another criminal justice agency may be disseminated only as permitted by subchapter E-1 or subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Upon review, the sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 603940

Enc. Submitted documents

c: Requestor
(w/o enclosures)