



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 10, 1995

Ms. Melissa Winblood
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Open Records Decision No. 632

Re: Availability of the emergency medical
services records of deceased persons and
related questions (RQ-649)

Dear Ms. Winblood:

The City of El Paso (the "city") has received numerous requests for the emergency medical services ("EMS") records of deceased persons. You seek a decision under the Texas Open Records Act (the "act"), Government Code ch. 552 (formerly V.T.C.S. art. 6252-17a), and ask whether the act requires the city to make the requested EMS records available to the public. You claim that section 552.101 of the Government Code in conjunction with section 773.091 of the Texas Health and Safety Code excepts the requested information from required public disclosure.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 773.091 of the Health and Safety Code provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

However, the Emergency Medical Services Act also provides under section 773.092(e):

Communications and records that are confidential under this section may be disclosed to:

....

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093.

Section 773.093, regarding consent, provides the following:

(a) Consent for the release of confidential information must be in writing and signed by the patient . . . or a personal representative if the patient is deceased.

The facts surrounding the requests at issue here are virtually identical to those at issue in Open Records Decision No. 598 (1991). In that decision this office addressed the applicability of section 5.08 of the Medical Practices Act, article 4455b, V.T.C.S., to certain records relating to an individual who died shortly after being cared for by the City of Irving's Emergency Medical Service. The Medical Practices Act makes confidential in section 5.08(b) "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician," but provides for release of such records in section 5.08(h)(5) to "any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for release of confidential information." Section 5.08(j)(1) provides that "[c]onsent for the release of confidential information must be in writing and signed by the patient . . . or a personal representative if the patient is deceased." In Open Records Decision No. 598, this office concluded that records created under the Medical Practices Act are governed by the provisions of that statute, rather than by the Open Records Act, but concluded that the requestor, who was the widow of the subject of the requested medical records, was entitled to the requested information under the Medical Practices Act. This office applied a similar analysis to the Emergency Medical Services Act, concluding that that statute provides for the same confidentiality, exceptions to confidentiality, and requirements for the release of information as does section 5.08 of the Medical Practice Act. See Open Records Decision No. 598, at 3 n.2. In concluding as we did in Open Records Decision No. 598, however, we assumed that the person requesting the records was the decedent's "personal representative" for purposes of the Medical Practice Act and the Health and Safety Code provisions. *Id.* at 3 n.3.

The term "personal representative" is not defined in either the Medical Practices Act or the relevant portions of the Health and Safety Code. You contend that the term "personal representative" as used in section 773.093 of the Health and Safety Code means "personal representative" as that term is defined in section 3(aa) of the Texas Probate Code. You contend, therefore, that section 773.093 permits release of the EMS records of deceased persons only to persons bearing letters testamentary or of administration that establish their status as "personal representatives." We limit our discussion in this decision to the meaning of the term "personal representative" for purposes of section 773.093 of the Health and Safety Code and whether only persons bearing letters testamentary or of administration may be furnished records governed by section 773.093.

The primary and ordinary meaning of the term "personal representative," when there is nothing in the context to control its meaning, is "executors and administrators." *Briggs v. Walker*, 171 U.S. 466, 471 (1898). The common-law meaning of "personal representative" is reflected in section 3(aa) of the Probate Code, which defines "personal representative" as an "executor, independent executor, administrator, independent administrator, temporary administrator, together with their successors." Prob. Code § 3(aa). "Personal representative" is almost identically defined in section 211.001 of the Tax Code as an "executor, independent executor, administrator, temporary administrator, trustee, or another person administering the affairs of a decedent's estate." Tax Code § 211.001(12).

On the other hand, the term "personal representative" need not be limited in meaning to an administrator, executor, heir, next of kin, or descendant and may, depending on the intention of the party using it, mean assignee or grantee, or may sometimes be synonymous with "legal representative." See *Reed v. American-German Nat'l Bank*, 155 F. 233, 236 (W.D. Ky. 1907). In several Texas statutes the term "personal representative" is used to signify "legal representative," instead of or in addition to its ordinary meaning. See, e.g., Fam. Code § 3.26 (acquiring jurisdiction over nonresident respondent or his or her "personal representative" in suit for dissolution of marriage); Nat. Res. Code § 161.281(b) (designation of "personal representative" by veteran to inspect land for sale under auspices of Veterans Land Board); Prop. Code § 112.010(c)(2) (authorizing "personal representative" of an incompetent, deceased, unborn, unascertained, or minor beneficiary to disclaim an interest in a trust); Water Code § 26.403 (designation of "personal representative" to represent agency members on Texas Groundwater Protection Committee).

When a word or phrase is not defined, it must be construed in relation to the context in which it appears. See Gov't Code § 311.011(a). Section 773.093 of the Health and Safety Code authorizes release of patient records to a "personal representative *if the patient is deceased*." (Emphasis added.) Although, as noted above, the term "personal representative" is not limited in meaning to an officer or other person appointed to take charge of the estate of a deceased person, we believe it clear that the context in which the term "personal representative" appears in section 773.093, that is, preceding the phrase "if the patient is deceased," indicates with some force that the legislature intended to incorporate into section 773.093 the definition of "personal representative" as it is ordinarily understood. We have uncovered no evidence indicating that the legislature intended to ascribe any other meaning to the term "personal representative." "Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." *Id.* § 311.011(b); see also *Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675 (Tex. Civ. App.--Houston [14th Dist.] 1974, no writ). In consideration of its common usage and the context in which it is

used in this particular instance, we conclude that the term "personal representative," as that term is used in section 773.093 of the Health and Safety Code, signifies "personal representative" as defined in section 3(aa) of the Probate Code.

Next we discuss whether a governmental body may provide access to records governed by section 773.093 only to personal representatives bearing letters testamentary or of administration. Ordinarily, one must apply to a court for letters testamentary, when a will is formally probated, or for letters of administration, when no will exists, when no executor is named in a will or when a named executor is deceased. Prob. Code § 178; *see also id.* § 77. However, we are unaware of any authority that supports your general proposition that one's status as personal representative is contingent upon the issuance of letters testamentary or of administration. Indeed, the legislature recently enacted chapter 12 of the Probate Code, which provides for informal probate *without issuance of letters*.¹ *See* Prob. Code §§ 501-524. In addition, the Probate Code provides under certain circumstances for the collection of small estates upon filing of an affidavit by the estate's distributees, without requiring issuance of letters testamentary or of administration. *See* Prob. Code § 143. It is possible, therefore, that a personal representative seeking records governed by section 773.093 may not bear, or be required to bear, letters testamentary or of administration. Thus, while letters testamentary and of administration may be accepted as sufficient evidence of the appointment and qualification of the personal representative of an estate, *see* Prob. Code § 186, a personal representative seeking records governed by section 773.093 may establish by some other means, for example, by affidavit, his or her personal representative status. Based on the records submitted for our review, we are unable to determine whether either of the requestors may be considered a personal representative of the deceased. We conclude, however, that the city may not require an individual seeking records under section 773.093 of the Health and Safety Code to produce letters testamentary or of administration when such letters, upon the city's request, have not been offered, but rather the city must accept other evidence establishing an individual's personal representative status.

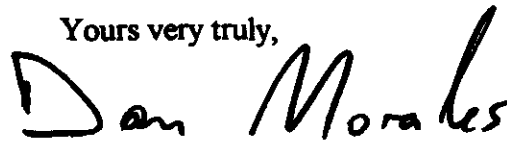
¹*See* Act of May 26, 1993, 73d Leg., ch. 712, § 7, 1993 Tex. Sess. Law Serv. 2790, 2794-98.

S U M M A R Y

The term "personal representative," as that term is used in section 773.093 of the Health and Safety Code, signifies "personal representative" as defined in section 3(aa) of the Probate Code.

A governmental body may not require a person seeking records under section 773.093 of the Health and Safety Code to produce letters testamentary or of administration when such letters, upon the city's request, have not been offered, but rather the governmental body must accept other evidence establishing an individual's personal representative status.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

SARAH J. SHIRLEY
Chair, Opinion Committee

Prepared by Loretta R. DeHay
Assistant Attorney General