



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2019

Mr. Mark Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2019-29231

Dear Mr. Kratovil:

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# 791898.

The Tarrant County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to the death of a named inmate. You state the medical examiner's office has released some information to the requestor. 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 made confidential 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. 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.

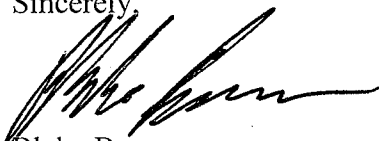
Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone 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.

Upon review, we find most of the submitted information constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. However, we find a portion of the information at issue pertains to a deceased individual. Thus, this information, which we marked for release, does not constitute medical records subject to section 159.002 and may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, with the exception of the information we marked for release, which must be released to the requestor, the medical examiner's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Mr. Mark Kratovil - Page 3

Ref: ID# 791898

Enc. Submitted documents

c: Requestor
(w/o enclosures)