



JOHN CREUZOT  
CRIMINAL DISTRICT ATTORNEY  
DALLAS COUNTY, TEXAS

April 25, 2023

Gaby Caplan

Via Email: [142776-65696648@request.muckrock.com](mailto:142776-65696648@request.muckrock.com)

Re: Public Information Act request received March 15, 2023,  
clarification requested March 28, 2023, clarification received April  
4, 2023, requesting information from Cause No. F09-59380, *State v.*  
*Gary Green*

**ID# PIA 2023-664**

Dear Ms. Caplan,

Please be advised that the Dallas County District Attorney's Office is withholding information that may be responsive to your request and has asked for a decision from the Texas Attorney General as to whether that information is excepted from required public disclosure.

I have enclosed a copy of the letter transmitted to the Attorney General today regarding your request. You will be notified when the Attorney General decides this issue.

Sincerely,

A handwritten signature in blue ink, reading "Laura Anne Coats", is written over a horizontal line.

Laura Anne Coats  
Assistant District Attorney  
Dallas County, Texas

Enclosures



JOHN CREUZOT  
CRIMINAL DISTRICT ATTORNEY  
DALLAS COUNTY, TEXAS  
APPELLATE DIVISION

April 25, 2023

Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711

Re: Public Information Act request received March 15, 2023, clarification requested March 28, 2023, clarification received April 4, 2023, requesting information from Cause No. F09-59380, *State v. Gary Green*

**ID# PIA 2023-664**

Dear Attorney General Paxton:

On behalf of the Dallas County District Attorney's Office, I am seeking a determination whether the above-requested records are exempt from disclosure under the Public Information Act (PIA). In Cause No. F09-59380, a jury convicted Gary Green of capital murder and on November 5, 2010, answered the special issues in a manner requiring the imposition of the death sentence. On October 3, 2012, the Court of Criminal Appeals affirmed Mr. Green's conviction on direct appeal. *Green v. State*, No. AP-76,458, 2012 WL 4673756 (Tex. Crim. App. Oct. 3, 2012) (not designated for publication). On June 24, 2015, the Court of Criminal Appeals denied his State Application for Writ of Habeas Corpus. Mr. Green was executed on March 20, 2023.

On March 15, 2023, the Dallas County District Attorney's Office received a PIA request from Gaby Caplan (Requestor) seeking "Any medical records in possession of your department Any internal notes/emails or messages from detectives/police regarding Garry [sic] Green's arrest Gary Green's interrogation video,<sup>1</sup> any records of mentions of voices telling him to do this Any notes from expert witnesses on his mental illness, diagnoses, records of conversations." See Exhibit A. On March 28, 2023, this Office requested clarification from Requestor. Clarification was received on April 5, 2023.

On April 17, 2023, this Office sent a letter to your Office regarding this request pursuant to Texas Government Code Section 552.301(a). Tex. Gov't Code Ann. § 552.301(a). The instant letter provides the legal specifics and copies of the information requested pursuant to Section 552.301(e) of the Texas Government Code. Tex. Gov't Code Ann. § 552.301(e).

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<sup>1</sup> This Office has reached an agreement with the Requestor regarding the interrogation videos and they are no longer at issue.

It is submitted that the requested information<sup>2</sup> is exempt from disclosure for the following reasons:

**1. The requested information includes medical records which are confidential by law.**

The Requestor has asked for all medical records relating to Mr. Green in the possession of this Office. *See* Exhibits C-F. Section 552.101 of the Government Code encompasses the Medical Practice Act (MPA), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. The MPA governs access to medical records and provides, in 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.

Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). Your 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. *See* Occ. Code § 159.001(3). Under this definition, a deceased person cannot be a “patient” under section 159.002 of the MPA. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Thus, the MPA is applicable only to records relating to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain.

Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons

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<sup>2</sup> This Office does not possess information responsive to some of the request. Representative samples of the responsive information in the possession of this Office are being provided.

or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004-005. The medical records of a patient who is now deceased may only be released on the signed written consent of the decedent's personal representative. *See id.* § 159.005(a)(5). Requestor has not provided this Office with a signed written consent from Mr. Green's representative. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Our Office contends that we must withhold these records under section 552.101 of the Government Code in conjunction with the MPA, in the absence of consent for release of the records that complies with sections 159.004 and 159.005 of the MPA.

**2. The requested information includes attorney work product dealing with the prosecution of crime.**

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." *See* Tex. Gov't Code Ann. § 552.111. This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.S.3d 351, 360 (Tex. 2000). Rule 192.5 defines work product as:

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents.

Tex. R. Civ. P. 192.5(a).

The requested information contains material prepared by attorneys representing the State in anticipation of or in the course of preparing for criminal litigation. *See* Exhibits G-I. Accordingly, it should be excepted from disclosure.

**3. The information requested includes the personal email addresses of members of the public**

The information requested consists of PIA requests made to this Office by members of the public and responses made by this Office. All of the communications at issue were made by email. *See* Exhibits H-K. Section 552.137(a) of the Government Code protects email addresses of members of the public used to communicate electronically with a governmental body. *See* Tex. Gov't Code § 552.137(a).

#### 4. Identifying information of child victims

The information requested contains identifying information relating to the surviving children who were also assaulted by Mr. Green. *See* Exhibit G. Section 552.101 of the Government Code encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d. 668, 685 (Tex. 1876). Your Office has found that common law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Tex. Fam. Code Ann. § 261.201 (West Supp. 2015). Accordingly, this Office contends that any identifying information of a juvenile victim, such as name, identification numbers, home address, telephone number, and the names of parents or guardians, should be withheld.

Finally, this Office seeks a determination that any other “confidential” information contained within the requested information that is not expressly set forth above is excepted from disclosure.

If you have any questions or need additional information, please contact me.

Sincerely,

**JOHN CREUZOT**

Criminal District Attorney  
Dallas County, Texas



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**LAURA ANNE COATS**

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cc: Gaby Caplan  
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