



May 3, 2001

Major Bobby Garmon
Smith County Sheriff's Department
P.O. Box 90
Tyler, Texas 75710

OR2001-1811

Dear Major Garmon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146718.

The Smith County Sheriff's Department (the "department") received a request from a former department employee for a copy of his personnel file. You have submitted for our review a psychological evaluation of the former employee. We assume you have released to the requestor the remaining information responsive to the request. If the remaining responsive information has not yet been released, it must be released. Gov't Code §§ 552.301, .302. You ask whether 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.

The requestor has requested a *copy* of his personnel file, and he has further requested that the responsive information be mailed to him. You responded to the request by correspondence stating that it is against the department's policy to provide a copy to the requestor, but that the requestor could make an appointment to review the records. We note that regardless of department policy, where a request made under the Act is for a copy of records, the Act requires the department to furnish a suitable copy upon payment of permissible charges. Gov't Code §§ 552.228(a); .221(a), (b)(2); *see also id.* § 552.262; 1 T.A.C. §§ 111.61 - .70.

We find that the release of the submitted information is governed by chapter 611 of the Health and Safety Code, which pertains to records created or maintained by a mental health professional. Section 611.002 reads in pertinent part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a), (b). Thus, the information is confidential with respect to the general public and may only be disclosed as provided by sections 611.004 and 611.0045. Section 611.0045 states in pertinent part:

(a) Except as otherwise provided by this section, *a patient is entitled to have access to the content of a confidential record made about the patient.*

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for the denial, and the duration of the denial.

Health & Safety Code § 611.0045(a), (b), (c) (emphasis added). In this instance, the requestor is the patient. Since the requestor is the "patient", section 611.0045(a) gives the requestor a right of access to the requested information, except as provided by other subsections of section 611.0045. *See Open Records Decision No. 565 at 3 (1990) (upon written consent of subject, mental health records must be released).* Section 611.0045(b) permits the professional to deny a patient access to any portion of that patient's mental health records if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health. Additionally, the above-quoted section 611.0045(c) establishes the procedure that a professional must follow when denying a patient access to the patient's own records.

Since chapter 611 of the Health and Safety Code requires the professional to consider the potential impact on the patient's health, the department must inform the professional of this request. The professional must make the determination required by the statute, and must state whether or not access is denied to part or all of the requested information. The professional must provide that decision in writing to the department. If the professional

decides not to deny access, then all of the information must be released to the requester. If the professional denies access only to a portion of the information, then the remainder of the information must be released. The department must not release any of the information until the professional's written answer is received. If the professional denies access to any portion of the information, the professional must also submit a written denial of access to the requester as required by section 611.0045(c) of the Health and Safety Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

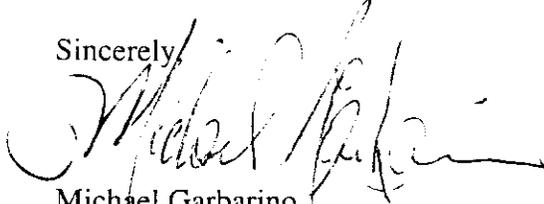
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over a printed name.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 146718

Encl. Submitted documents

cc: Mr. David C. Williams
2720 South Broadway Avenue #136
Tyler, Texas 75701
(w/o enclosures)