



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 13, 2003

Mr. James M. Frazier, III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2003-0955

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176735.

The Texas Department of Criminal Justice (the "TDCJ") received a request dated November 27, 2002 from an attorney, on behalf of his client, for a copy of an investigative report concerning incidents that involved his client during his client's incarceration at a TDCJ facility. You state the TDCJ either has released or will release basic information regarding case number 02-1610TDCJ to the requestor. However, you assert the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have reviewed the information you submitted and considered the exceptions you claim.

First, we note the Medical Practice Act (the "MPA") governs some information in the submitted documents.¹ Section 159.002 of the MPA provides in part:

(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.

¹ Under the rules of statutory construction, a specific statute prevails over a more general statute. Gov't Code § 311.026; *City of Dallas v. Mitchell*, 870 S.W.2d. 21 (Tex. 1994).

(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(b), (c). The MPA permits disclosure of MPA records to the patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Occ. Code §§ 159.003, .004, .005. The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Here, the medical records at issue concern the client of the requestor. The submitted information contains a release form, signed by the client, authorizing the requestor to obtain any medical records pertaining to his client. Thus, the TDCJ may release the MPA records, which we have marked, only in accordance with the MPA. Open Records Decision No. 598 (1991).

Next, you assert section 552.134 of the Government Code permits the TDCJ to withhold all of the submitted information. Section 552.134(a) of the Government Code provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

....

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. The submitted information contains information regarding allegations of a sexual assault involving an inmate. Accordingly, while the TDCJ must generally withhold the submitted information under section 552.134, it must release certain basic information regarding the alleged crime pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and TDCJ officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Therefore, we agree the TDCJ must release such basic information to the requestor.

However, we note the TDCJ must withhold some of the listed basic information under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy. Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

In this instance, the submitted information concerns more than one sexual assault victim. The requestor is an attorney who represents one of the alleged victims, as evidenced by the signed authorization for release of information form. Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest.² Therefore, the TDCJ must release victim-identifying information pertaining to the

²Because the information to be released under section 552.023 is confidential with respect to the general public, if the TDCJ receives a future request for this information from an individual other than the requestor or his authorized representative, the TDCJ should again seek our decision.

requestor's client pursuant to section 552.023(a) of the Government Code. However, the TDCJ must redact from the basic information the names of any other inmates, who are alleged victims of a sexual assault, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the TDCJ must do the following: 1) release the MPA information, which we have marked, only in accordance with the Medical Practice Act and 2) withhold the submitted information pertaining to inmates under section 552.134 of the Government Code, but release basic information regarding the alleged crime pursuant to section 552.029(8) with redactions of identifying information of alleged sexual assault victims, other than the requestor's client, as required by section 552.101 of the Government 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).

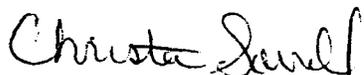
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 176735

Enc: Submitted documents

c: Mr. George Powell
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(w/o enclosures)