



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 27, 2003

Ms. Lisa Hernandez
Interim General Counsel
Texas Commission on Alcohol and Drug Abuse
P.O. Box 80529
Austin, Texas 78708-0529

OR2003-1276

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177112.

The Texas Commission on Alcohol and Drug Abuse (the "commission") received a request for "the CI file" for a named individual. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We assume that the commission has released any remaining requested information. If you have not, you must do so at this time. See Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We note that the information submitted as Attachment I is excepted under section 611.002 of the Health and Safety Code. Section 611.002 of the Health and Safety Code provides that "[c]ommunications 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." A "professional" is defined as:

(A) a person authorized to practice medicine in any state or nation;

¹ You claim that some information is excepted from disclosure pursuant to section 552.108 in conjunction with chapter 411 of the Government Code. However, we note that any such information would be excepted under section 552.101 as information made confidential by law.

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Section 611.004(d) states that “[a] person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information.” Attachment I constitutes a mental health record that is confidential under section 611.002 and may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045. As we are able to make this determination, we do not address your claim under federal law for this information.

You claim that the information submitted as Attachment II is confidential under part 2 of title 42 of the Code of Federal Regulations.² Those rules provide, in pertinent part:

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 C.F.R. § 2.2(a). You indicate that Attachment II was received by the commission and regards the performance of a program or activity relating to treatment for chemical dependency. Upon review of the information, we find that you have not demonstrated that Attachment II is maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research. Therefore, you may not withhold Attachment II under section 552.101 in conjunction with this provision of the Code of Federal Regulations.

Under section 411.1105 of the Government Code, the commission is entitled to obtain from the Department of Public Safety (“DPS”) criminal history record information maintained by DPS that relates to a person who is an applicant for a chemical dependency counselor’s license under chapter 504 of the Occupations Code or the holder of a license under that

² Because you indicate that these regulations concern “client-identifying information of individuals seeking or receiving substance abuse services,” we assume that you intended to refer to part 2 of subchapter A of chapter 1 of title 42 of the Code of Federal Regulations.

chapter. *See* Gov't Code § 411.1105(a). Such information may not be disclosed except by court order, with the consent of the person who is the subject of the information, or to the applicant or licensee. *Id.* § 411.1105(c), (d). Thus, to the extent the commission maintains such information, and none of the exceptions to confidentiality apply, it must withhold the information under section 552.101 in conjunction with section 411.1105 of the Government Code.

You further claim that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Common-law privacy protects information if (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. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes 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.

Further, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this case, we find that the information at issue is of legitimate public interest, and therefore, it is not protected by common-law privacy. Moreover, none of the information consists of criminal history information compiled by a governmental entity. Thus, neither do the common-law privacy concerns expressed in *Reporters Committee* apply to make any information confidential in this instance.

In summary, Attachment I may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. To the extent that the commission maintains criminal history record information obtained from DPS that relates to a person who is an applicant for or holder of a chemical dependency counselor's license, and none of the relevant exceptions to confidentiality apply, it must withhold this information under section 552.101 of the Government Code in conjunction with section 411.1105 of the Government Code. The remaining requested information must be released.

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 Dep't of Pub. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 177112

Enc. Submitted documents

c: Ms. Kim Pringle
Christian Farms-Treehouse, Inc.
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(w/o enclosures)