



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 27, 2003

Mr. James L. Hall
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342-4004

OR2003-3537

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181676.

The Texas Department of Criminal Justice (the "department") received a request for a specified inmate's records. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with part 2 of title 42 of the Code of Federal Regulations.¹ These regulations provide in part:

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function 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,

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by federal regulations.

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. § 2.1(a). You state that the department operates a substance abuse felony punishment program which is funded by federal funds. Accordingly, to the extent that it exists and to the extent that none of the release provisions associated with these regulations would apply, we conclude that the department must withhold any requested information concerning the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States pursuant to section 552.101 of the Government Code in conjunction with section 2.1(a) of title 42 of the Code of Federal Regulations.

You also claim that portions of the requested information are excepted from disclosure pursuant to section 552.101 in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure. Section 9(j) of article 42.12 provides in pertinent part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only: (1) to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section; (2) pursuant to Section 614.017, Health and Safety Code; or (3) as directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42.12, § 9(j). Because none of the release provisions associated with section 9(j) of article 42.12 appear to be applicable in this instance, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.134 of the Government Code. Section 552.134 provides in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about

an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code, § 552.134(a). We find that the remaining submitted information concerns an inmate who was confined in a facility operated by the department. Section 552.029 of the Government Code does not apply to this information. Accordingly, we conclude that the department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.

In summary, to the extent that it exists and to the extent that none of the release provisions associated with the regulations would apply, the department must withhold any requested information concerning the identity, diagnosis, prognosis, or treatment of any patient maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States pursuant to section 552.101 of the Government Code in conjunction with section 2.1(a) of title 42 of the Code of Federal Regulations. The department must withhold the information that we have marked pursuant to section 552.101 in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure. The department must withhold the remaining submitted information pursuant to section 552.134 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

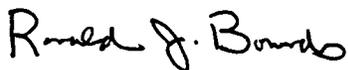
that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 181676

Enc. Marked documents

cc: Mr. Gerald L. Byington, LMSW-ACP
Mitigation Specialist
P.O. Box 164274
Austin, Texas 78716-4274
(w/o enclosures)