



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 25, 2003

Ms. Cathleen Parsley
General Counsel
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

OR2003-8547

Dear Ms. Parsley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191794.

The State Office of Administrative Hearings ("SOAH") received a request for information regarding a named individual, including but not limited to "the proposal for Decision, filed with the Texas State Board of Medical Examiners." You note that some of the requested information will be released to the requestor. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information made confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. Most of the documents you submitted to this office are the psychological evaluations of the named individual. The release of these documents is governed by chapter 611 of the Health and Safety Code. Section 611.002 of the Health and Safety Code makes confidential "[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." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals, including "a person who has the written consent

¹ In your submission on September 30, 2003, you state that SOAH wishes to withdraw its section 552.101 and section 552.108 claims regarding the transcribed interviews and statements made to the Fort Worth Police Department and to an investigator of the Texas State Board of Medical Examiners in connection with a homicide investigation of Dr. Grotti. You note that these documents will be released to the requestor. You also withdraw all privacy arguments relating to the medical records referred to in your September 23, 2003 letter. Accordingly, we do not address your claims regarding this information.

of the patient.” Health & Safety Code § 611.004(a)(4). Section 611.006(a)(3) provides for the release of mental health records in a judicial or administrative proceeding when the patient or a representative of the patient acting on the patient’s behalf submits a written waiver to the release of confidential information in section 611.002. We conclude that SOAH may release the psychological evaluations that you have submitted only in accordance with the access provisions of chapter 611. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

We now examine the remaining submitted information. Section 159.002 of the Medical Practice Act (the “MPA”) provides in pertinent 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.

(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.

Upon review, we conclude that the documents labeled “Exhibit Staff-1” and “Exhibit Respondent 7” do not constitute medical records that can be withheld from disclosure pursuant to the MPA. Therefore, these two documents must be released to the requestor.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 191794

Enc. Submitted documents

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