



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

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

OR2004-4228

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#202292.

The Texas Department of Criminal Justice (the "TDCJ") received a request for all information in TDCJ's possession related to a named former TDCJ inmate, "including a medical file, if any." You claim that the requested information is excepted from disclosure under sections 552.101, 552.117 and 552.134 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

¹Although you also initially raised sections 552.103, 552.107, 552.108, 552.111 and 552.130 of the Government Code, you have not submitted arguments stating how these exceptions apply to the submitted information. Therefore, we presume you have withdrawn your claims under these sections.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that the submitted documents include medical records, access to which is governed by the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides:

(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.

Occ. Code § 159.002(b), (c). 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). We have marked medical records in the submitted information that may only be released in accordance with the MPA. Open Records Decision No. 598 (1991).

We turn now to your arguments under section 552.134 of the Government Code regarding the remainder of the submitted information. Section 552.134 of the Government Code relates to information about inmates of TDCJ and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by [TDCJ] 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 [TDCJ].

Gov't Code § 552.134(a). The remaining submitted records constitute information about an inmate confined in a facility operated by TDCJ. Section 552.029 of the Government Code does not apply to this information. Therefore, the remaining submitted information is excepted from disclosure under section 552.134 of the Government Code and must be withheld.³

³Because section 552.134 is dispositive, we need not consider your other claimed exceptions.

In summary, the medical records in the submitted information may only be released in accordance with the MPA. TDCJ must withhold the remaining submitted information under 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,

A handwritten signature in black ink that reads "Cary Grace". The signature is written in a cursive style and is positioned above the typed name.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID#202292

Enc. Submitted documents

c: Ms. Christina Herrera
Dodge, Anderson, Jones, Bezney & Gillman
One Lincoln Centre
5400 LBJ Freeway, Suite 910
Dallas, Texas 75240
(w/o enclosures)