



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2004

Ms. Myrna S. Reingold
Galveston County - Legal Department
123 Rosenberg, Suite 4127
Galveston, Texas 77550-1454

OR2004-9582

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212716.

Galveston County (the "county") received a request from the Disability Determination Services division of the Texas Department of Assistive and Rehabilitative Services for mental health and psychiatric evaluation information concerning a named individual. You inform us that the requested records are held by the county juvenile probation department. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the requested information is confidential pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), sections 1320d through 1320d-8 of title 42 of the United States Code. At the direction of Congress, the United States Department of Health and Human Services ("HHS") has promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. §§ 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health

information by a covered entity. *See* 45 C.F.R. §§ 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office recently addressed the interplay of the Privacy Rule and the Public Information Act (the "Act"), in Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. Open Records Decision No. 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). We therefore determine that the county may not withhold any of the information at issue pursuant to section 552.101 in conjunction with HIPAA.

You also indicate that the submitted information may be excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Generally, juvenile law enforcement records are confidential under section 58.007(c).¹ Section 58.007(c) provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

¹ Section 58.007(c) makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 259. Law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code.

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The submitted information consists of a report of a psychological evaluation of the individual named in the request. We note that the submitted report is not a juvenile law enforcement record. Thus, we determine that this information is not confidential pursuant to section 58.007, and is not excepted from disclosure under section 552.101 on that basis.

You also indicate that the submitted information may be confidential under section 58.005 of the Family Code. Section 58.005(a) provides in pertinent part:

Records and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or form making a referral for treatment of a child . . . may be disclosed only to:

. . .

(4) a government agency if the disclosure is required or authorized by law[.]

Fam. Code § 58.005(a)(4). The submitted document was obtained for the purpose of diagnosis, examination, evaluation, or treatment of a child. Thus, we agree that section 58.005 is generally applicable to the submitted information. As you acknowledge, however, section 58.005(a)(4) authorizes disclosure of information to a government agency if the disclosure is required or authorized by law.

The copy of the written request you have submitted for review indicates that the requestor seeks the information at issue for the purpose of determining the named individual's eligibility for Social Security/SSI disability benefits. Section 161.202 of the Health and Safety Code governs requests for mental health records by a person's authorized representative "for use in supporting an application for disability benefits or other benefits or assistance the [person] may be entitled to receive based on that [person's] disability[.]" Health & Safety Code § 161.202. Section 161.202 requires that a state agency that requests a record under this section "shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application," and we note that the requestor has included such a statement in this instance. *Id.* Section 161.203 provides that a "health care provider or health care facility" that receives such a request "*shall provide* to the requestor a medical or mental health record

requested under section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.” *Id.* § 161.203 (emphasis added). You inform us that under contractual arrangements with health care providers, the county juvenile probation department provides health care to juveniles under its supervision. We therefore determine that section 161.203 is applicable in this instance. *See id.* § 161.201 (defining “health care provider”). We further determine that these provisions of the Health and Safety Code give the requestor a statutory right of access to the requested information. Accordingly, we find that under the present circumstances disclosure is authorized for purposes of section 58.005(a)(4) of the Family Code.

We note you also raise section 611.002 of the Health and Safety Code, which provides that mental health records created or maintained by a mental health professional may only be released as provided under chapter 611. As you acknowledge, section 611.004 provides that “a professional may disclose confidential information . . . to a governmental agency if disclosure is required or authorized by law[.]” *Id.* § 611.004(a)(1). As we have determined that sections 161.202 and 161.203 of the Health and Safety Code authorize the disclosure of the submitted information in this instance, we conclude that the submitted mental health record may be released in accordance with section 611.004 of the Health and Safety Code.

In conclusion, we determine that the requestor has an affirmative right of access to the submitted information pursuant to sections 161.202 and 161.203 of the Health and Safety Code. *See Health & Safety Code §§ 161.202, .203; see also Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act).* We therefore conclude the county must release the submitted information to the requestor.²

We note you ask this office to issue a previous determination to the county. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us and 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

² We note that because the requestor has a special right of access to this information in this instance, the county must again seek a decision from this office if it receives another request for the same information from another requestor.

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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 212716

Enc: Submitted documents

c: Ms. Carolyn Allred
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(w/o enclosures)