



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2004

Mr. David Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2004-10787

Dear Mr. Swope:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215588.

The Harris County Sheriff's Department (the "department") received a request for information relating to any disciplinary action taken against a named captain and reports of a named doctor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

First, we note that the information submitted as Exhibit B is subject to chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides as follows:

Communications 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.

Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose,

¹ We note that you have redacted some of the submitted information that you seek to withhold from the requestor. Because we are able in this instance to discern the nature of the information at issue, we will determine whether it is excepted from public disclosure. In the future, you should refrain from redacting any information that you submit to this office in seeking an open records ruling. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). The information in Exhibit B constitutes mental health records, which may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.²

Next, section 552.117(a)(2) excepts from disclosure a peace officer's home address, home telephone number, personal pager number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we conclude that the department must withhold the information that you have marked pursuant to section 552.117(a)(2) of the Government Code.³

You also raise section 552.130 of the Government Code. This section excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). However, the submitted documents do not contain any section 552.130 information. Thus, this section is inapplicable to the submitted information.

In summary, the information in Exhibit B may only be released in accordance with chapter 611 of the Health and Safety Code. The information you have redacted must be withheld under section 552.117(a)(2) of the Government Code. The remaining information 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.

² As our ruling on this information is dispositive, we do not address your other arguments for this information.

³ Based on our findings under section 552.117(a)(2), we need not reach your claim under section 552.1175.

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# 215588

Enc. Submitted documents

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(w/o enclosures)