



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2005

Ms. Karen Hattaway  
Open Records Attorney  
Texas Department of Aging and Disability Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR2005-08807

Dear Ms. Hattaway:

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# 233239.

The Texas Department of Aging and Disability Services (the "department") received a request for four separate categories of information regarding the Abilene State School and unnamed deceased persons. You claim that the submitted 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.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that the requested information is confidential under section 552.101 in conjunction with section 611.002 of the Health and Safety Code, which applies to "[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[.]" The Health and Safety Code defines

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<sup>1</sup>We 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.

“patient” as “a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction; “professional” is defined in part as “a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder.” Health and Safety Code § 611.001. Upon review, you have not demonstrated that any of the submitted information consists of either a communication between a patient and a professional or a record of the identity, diagnosis, evaluation, or treatment, of a patient that was created or maintained by a professional. *See Id.* § 611.002. Thus, the information at issue may not be withheld on the basis of this provision.

You also assert that the information is confidential under the Health Insurance Portability and Accountability Act of 1996 (“HIPPA”), 42 U.S.C. §§ 1320d-1320d-8. The department has several lawsuits pending against the Office of the Attorney General over the release of similar information. Furthermore, your arguments here are similar to your arguments in the files that are now at issue in litigation. Accordingly, we are issuing this letter ruling without a finding regarding the applicability of HIPPA to this information and will allow the trial court to resolve the issue of whether records of the type at issue must be released to public requestors.

In summary, the submitted information may not be withheld under section 552.101 in conjunction with section 611.002 of the Health and Safety Code. We decline to rule on the applicability of HIPPA to this information at this time.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

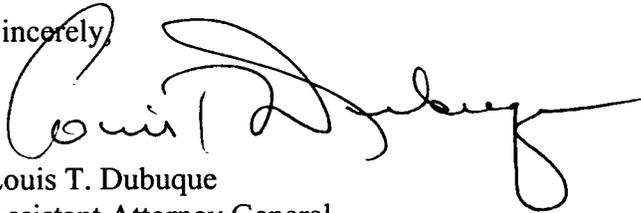
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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, appearing to read "Louis T. Dubuque", written in a cursive style.

Louis T. Dubuque  
Assistant Attorney General  
Open Records Division

LTD/jpa

Ref: ID#233239

Enc. Submitted documents

c: Mr. Hugh Swift  
351-B South Hwy 83  
Abilene , Texas 79602  
(w/o enclosures)