



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2006

Ms. Paige Mims  
Assistant City Attorney III  
City of Plano  
P. O. Box 860358  
Plano, Texas 75086-0358

OR2006-05386

Dear Ms. Mims:

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# 249782.

The City of Plano (the "city") received a request for information pertaining to the pre-employment background investigation of the requestor. You claim the submitted information is excepted from disclosure because of a confidentiality agreement that the requestor signed. We have considered your argument and reviewed the submitted information.

The city states that the requestor signed a "Confidential Information Agreement" regarding her application process with the city. Based on that agreement, the city seeks to withhold the requestor's application information. However, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act without specific statutory authority to do so. Attorney General Opinion JM-672 (1987); Open Records Decision No. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."). In this instance, you have not provided us with the specific statutory authority that allows you to make the submitted information confidential by agreement. Thus, we presume no such authority exists. Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any agreement or statement specifying otherwise.

We note that the submitted information contains records that are subject to chapter 611 of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information

protected by 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) reads 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, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Mental health records may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. Health & Safety Code § 611.004, .0045. In this instance, the requestor is the patient to whom the mental health records pertain and may have a right of access to them. Accordingly, the city must release the marked mental health records pursuant to sections 611.004 and 611.0045 of the Health and Safety Code. As you do not raise any other exceptions against disclosure for the remaining information, it must be released.<sup>1</sup>

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).

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<sup>1</sup>We note, however, that the submitted documents contain information that is confidential with respect to the general public. *See* Gov’t Code § 552.023 (person’s authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person’s privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the city receives another request for this information from someone other than this requestor or her representative, the city must ask this office for a decision whether the information is subject to public disclosure.

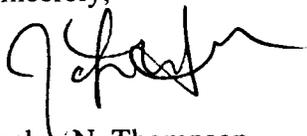
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 249782

Enc. Submitted documents

c: Ms. Roshunda Jones  
2907 Alameda Plaza Drive  
Houston, TX 77045  
(w/o enclosures)