



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2006

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Assistant General Counsel
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Mr. John C. West
General Counsel
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Texas Department of Criminal Justice
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OR2006-11457

Dear Ms. Cordova and Mr. West:

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# 260666.

The Texas Department of Criminal Justice (the "department") received a request for all records pertaining to the requestor's parole file, as well as all other information pertaining to the requestor. The department and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The department informs us that it will release some of the requested information to the requestor. The department claims that the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG claims that the information it has submitted is excepted from disclosure under sections 552.101, 552.108, 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.¹

¹We 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 must address the department's procedural obligations under the Act. Pursuant to section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us that the department received this request for information on July 14, 2006. Accordingly, you were required to submit general written comments stating the reasons why the stated exceptions apply and a copy of the specific information requested by August 4, 2006. However, you did not submit this information until August 15, 2006. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301. However, because sections 552.101 and 552.134 of the Government Code can provide compelling reasons to withhold information, we will address your arguments.

Next, we note that some of the department's documents consist of medical records. Section 552.101 of the Government Code excepts from public 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 other statutes. Access to medical records is governed by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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.

Id. § 159.002(a)-(c). Medical records must be released on 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. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the

records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked the medical records in the department's submitted information. As the subject of these medical records, the requestor may have a right of access to these medical records under the MPA. In any event, the medical records may only be released in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 of the Government Code also encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029 [of the Government Code].

Gov't Code § 508.313(a), (f); *see also id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). We note that section 508.313 is explicitly made subject to section 552.029 of the Government Code. *See id.* § 508.313(f). Section 552.029 provides:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). Pursuant to section 552.029(8), basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure.

The department asserts that some of the information it has submitted is maintained by the department and relates to persons released on parole. The requestor is not an entity

authorized to obtain this information under section 508.313(c). However, we note that some of this information relates to crimes by parolees that were committed while they were incarcerated. Thus, while the department must generally withhold the parole information under section 552.101 in conjunction with section 508.313, the department must release basic information regarding crimes involving inmates pursuant to section 552.029(8) of the Government Code.²

Both the department and OIG claim that the remaining information is excepted from public disclosure under section 552.134 of the Government Code. Section 552.134 relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice 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 the department.

Gov't Code § 552.134(a). The department and the OIG state that the remaining submitted information concerns inmates confined in a facility operated by the department. Based on these representation and our review, we find that section 552.134 is applicable to the remaining submitted information. We note, however, that a portion of this information relates to crimes involving inmates. Thus, while the department and the OIG must generally withhold the remaining submitted information under section 552.134, the department and OIG must release basic information regarding crimes involving inmates pursuant to section 552.029(8) of the Government Code.³

In summary, the medical records we have marked may only be released in accordance with the MPA. With the exception of the basic information regarding crimes committed by parolees while incarcerated, which is subject to section 552.029(8) of the Government Code, the department must withhold the parole information under section 552.101 in conjunction with section 508.313 of the Government Code. With the exception of the basic information regarding crimes involving inmates, which is subject to section 552.029(8) of the Government Code, the department and the OIG 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.

²Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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).

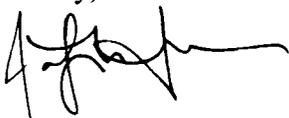
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jaelyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/dh

Ref: ID# 260666

Enc. Submitted documents

c: Stanley Smith
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(w/o enclosures)