



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2006

Ms. Patricia Fleming  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P. O. Box 4004  
Huntsville, Texas 77342

OR2006-13994

Dear Ms. Fleming:

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# 265809.

The Texas Department of Criminal Justice (the "department") received a request for various categories of information pertaining to the requestor's client, including information about a named officer and complaints filed by named offenders. You state that some of the requested information is being released, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Section 552.101 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, including the Medical Practice Act (the "MPA"),

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<sup>1</sup>The department states that it is withholding the addresses, telephone numbers, social security numbers, and family member information of department employees which are excepted under section 552.117(a)(3) and the previous determination set forth in Open Records Letter No. 2005-01067 (2005). The department also states that it is withholding other social security numbers pursuant to section 552.147 of the Government Code. *See Gov't Code § 552.147(b)* (governmental body may redact social security number from public release without necessity of requesting decision from this office under the Act).

<sup>2</sup>We assume that, to the extent any additional responsive information existed when the department received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).*

subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides the following:

(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.

Occ. Code § 159.002(b), (c). Medical records must be released upon 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. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). You inform us that the submitted information contains a medical record of the requestor's client; therefore, this medical record, which you have marked, may only be released in accordance with the MPA.

The submitted information also contains the fingerprints of the requestor's client. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted fingerprint information is confidential under section 560.003; however, the requestor, as the representative of the individual at issue, has a special right of access to this information. *See id.* § 560.002(1). Therefore, the department must release this information, which we have marked, pursuant to section 560.002.

You assert that the remaining information is excepted under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the department and provides in relevant part the following:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] 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). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice 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(1), (8).

On review, we agree that the remaining submitted records constitute information about inmates for purposes of section 552.134. However, the records contain information that concerns incidents involving the use of force and alleged crimes involving inmates. Thus, the department must release basic information concerning these incidents and crimes. Basic 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. The department must withhold the remaining submitted information pursuant to section 552.134.<sup>3</sup>

To conclude, the medical record may only be released in accordance with the MPA and the marked fingerprints must be released pursuant to section 560.002 of the Government Code. With the exception of basic information regarding the use of force and alleged crimes involving inmates, the department must withhold the remaining information under section 552.134.

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

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<sup>3</sup>Because we are able to resolve this under section 552.134, we do not address your other arguments for exception regarding the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 265809

Enc. Submitted documents

c: Mr. Samuel O. Macaluso  
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(w/o enclosures)