



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2006

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

OR2006-14489

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# 266728.

The Texas Department of Criminal Justice (the "department") received a request for information regarding a specified disciplinary hearing of a named inmate. You state that you have released some information, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that a portion of the submitted information is 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 made confidential by statute, including Section 611.002 of the Health and Safety Code. Section 611.002 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." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *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. We have marked the information that constitutes mental health

records, and that may only be released in accordance with sections 611.004 and 611.045 of the Health and Safety Code.

Section 552.134 of the Government Code 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 552.029 provides that notwithstanding section 552.134, eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department are] subject to required disclosure[.]" *Id.* § 552.029. These eight categories of information include "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).

You state that the submitted information concerns inmates confined in a facility operated by the department. Thus, we agree that section 552.134 is applicable to the remaining submitted information. However, portions of the submitted documents relate to information which is subject to required disclosure under section 552.029 of the Government Code, including crimes involving inmates. Thus, while the department must generally withhold the submitted information under section 552.134, the department must release basic information regarding crimes involving inmates pursuant to section 552.029(8).¹

In summary, the mental health records we have marked may only be released in accordance with sections 611.004 and 611.045 of the Health and Safety Code. With the exception of basic information regarding crimes involving an inmate, which must be released pursuant to section 552.029(8) of the Government Code, the department 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.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

¹Basic 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.

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).

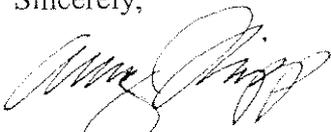
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jww

Ref: ID# 266728

Enc. Submitted documents

c: Ms. Debra Bone
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(w/o enclosures)