



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2007

Ms. Carey Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2007-07973

Dear Mr. Grace:

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# 281560.

The Austin Police Department (the "department") received a request for information pertaining to a specified incident. You state that most of the requested information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information contains mental health records created by mental health professionals. You claim that this 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. Section 552.101 encompasses information protected by other statutes. Mental health records are confidential under section 611.002 of the Health and Safety Code, which provides in part:

- (a) 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.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). The department must withhold the mental health records you have marked, as well as the additional information we have marked, under section 611.002, unless the requestor has a right of access to the information under sections 611.004 and 611.0045.

We note that the submitted documents contain information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Thus, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the mental health records you have marked, as well as the additional information we have marked, under section 611.002 of the Health and Safety Code, unless the requestor has a right of access to the information under sections 611.004 and 611.0045 of the Health and Safety Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

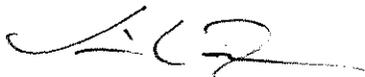
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/ma

Ref: ID# 281560

Enc. Submitted documents

c: Ms. Theresa M. Patrick  
Mitchell, Goff & Mitchell, LLP  
10440 North Central Expressway, Suite 1100  
Dallas, Texas 75231  
(w/o enclosures)



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2007

Mr. Charles K. Eldred  
Assistant City Attorney  
Knight & Partners  
223 West Anderson Lane, Suite A105  
Austin, Texas 78752

OR2007-07962

Re: Request for the arrest report of Edward Simon

Dear Mr. Eldred:

The Office of the Attorney General has received your request for a ruling and assigned your request ID# 287350.

After reviewing your arguments and the submitted information, we have determined that your request does not present a novel or complex issue. Thus, we are addressing your claims in a memorandum opinion. You claim that the submitted information may be withheld from the requestor pursuant to section 552.108(a)(1) of the Government Code. We have considered your arguments and the submitted information and have determined that in accordance with section 552.108(a)(1) you may withhold the submitted information. However, you must release the basic information pursuant to section 552.108(c) of the Government Code.

For more information on the cited exception, as well as information on the rights and obligations of governmental bodies and requestors, please refer to open government information contained on the Office of the Attorney General website at [www.oag.state.tx.us](http://www.oag.state.tx.us). You may also contact our Open Government Hotline at 1-877-OPENTEX.

Enc: Submitted documents

cc: Ms. Stephanie Dokupil  
806 North Rhomberg  
Burnet, Texas 78611  
(w/o enclosures)