



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2009

Mr. Ben Stool
Assistant District Attorney
Dallas County
Administration Building- 5th Floor
411 Elm Street
Dallas, Texas 75202-3384

OR2009-10413

Dear Mr. Stool:

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# 350333.

The Dallas County District Attorney (the "district attorney") received a request for the positions and names of district attorney employees who had left the district attorney's office since a specified date and for the number of female prosecutors who had been or are currently on maternity leave since a specified date. You state that you have released the information responsive to the first portion of the request. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your assertion that the portion of the request at issue is a fact question and that the information responsive to the request was created after the date the request was received. We note that a governmental body is not required to answer factual questions or create new information in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must make a good faith effort, however, to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this case, because you have submitted responsive information for our review and made arguments

against the disclosure of this information, we consider the district attorney to have made a good faith effort to identify information responsive to the request. While the information was created after the date of the request, we understand the responsive information to have been compiled from records existing and in the possession of the district attorney before the date of the request. Therefore, we will address the applicability of your arguments to the information at issue.

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. Section 552.101 encompasses information made confidential by statute, such as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). You claim HIPAA, 42 U.S.C. §§ 1320d-1320d-8, governs portions of the submitted information. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts.160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the district attorney may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

You claim the submitted information is protected under section 552.1175 of the Government Code. This section excepts from public disclosure the home addresses and telephone

numbers, social security numbers, and family member information of specified categories of governmental body employees or officials. *See* Gov't Code § 552.1175(a)-(b). Upon review of the submitted information, we find the information does not contain the home addresses and telephone numbers, social security numbers, or family member information of any persons falling within the specified categories of governmental body employees listed in section 552.1175. Thus, you have failed to demonstrate section 552.1175 applies to the submitted information. Consequently, none of the submitted information may be withheld under section 552.1175 of the Government Code. As you raise no further arguments, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 350333

Enc. Submitted documents

c: Requestor
(w/o enclosures)