



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2009

Mr. Erik Brown
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-11233

Dear Mr. Brown:

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# 352078.

The Texas Department of Criminal Justice (the "department") received a request for all records, especially records pertaining to psychiatric care, regarding a former department inmate. You claim that the requested information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information consists of mental health records 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."¹ Gov't Code § 552.101. Section 552.101 encompasses chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides as follows:

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.

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

Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Generally, mental health records are confidential. However, it appears that the requestor may have a right of access to the mental health records in this instance. 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. Therefore, the submitted records may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/rl

Ref: ID# 352078

Enc. Submitted documents

c: Requestor
(w/o enclosures)