



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2009

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

OR2009-14608

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# 358396.

The Texas Department of Criminal Justice (the "department") received a request for a specified Direct Review Assessment and attachments pertaining to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the Texas Department of Criminal Justice], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the Texas Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

*Id.* § 508.313(a). The department states the submitted information is maintained by the department's Parole Division and relates to an inmate that was subject to release on parole or release to mandatory supervision or executive clemency. After reviewing the department's arguments and the submitted information, we agree the submitted information is generally subject to section 508.313.

We note, however, that the submitted information consists of a mental health record, which is subject to chapter 611 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses 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"). 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 submitted information in this instance. Sections 611.004 and 611.0045 permit disclosure of mental health records to a patient or a person who has the written consent of the patient. *Id.* §§ 611.004, .0045. Accordingly the submitted information must generally be released to the requestor. Because the submitted information falls under both chapter 611 of the Health & Safety Code and section 508.313 of the Government Code, and because the release provisions of these sections are in conflict, we must determine which statute governs access to the submitted information.

Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was

enacted later and there is clear evidence that the legislature intended the general provision to prevail. See Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 508.313 of the Government Code generally applies to any type of record obtained and maintained by the department that is related to an inmate subject to release on parole, release to mandatory supervision, or executive clemency. However, chapter 611 of the Health & Safety Code is more specific because it is only applicable to mental health records. Accordingly, we conclude that, notwithstanding the applicability of section 508.313 of the Government Code, the submitted information is subject to chapter 611 of the Health & Safety Code and may only be released in accordance with sections 611.004 and 611.0045 of the Health & Safety Code.

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](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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 358396

Enc. Submitted documents

c: Requestor  
(w/o enclosures)