



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2009

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

OR2009-15867

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# 360913.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's grievance filings. You claim the submitted information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially we note the submitted information contains non-responsive information, which we have marked. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

We note the submitted information contains medical records. 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 exception encompasses information other statutes make confidential, such as the Medical

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. We have marked the information that constitutes medical records subject to the MPA. We note, however, that the requestor is the subject of the marked medical records. Accordingly if the requestor provides the proper consent, the marked medical records must be released to him. *See id.* § 159.005(a)(2). General exceptions in the Act, like section 552.134, cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993), 451 at 3 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the requestor does not provide the proper consent, the marked medical records must be withheld under section 552.101 in conjunction with the MPA.

We note the submitted information also contains mental health records. Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which pertains to mental health records. Section 611.002(a) provides that "[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, are confidential." Health & Safety Code § 611.002(a). 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 is confidential under section 611.002 of the Health and Safety Code. We note, however, that the requestor is the subject of the marked mental health records. Accordingly if the requestor provides the proper consent, the marked mental health records must be released to him. *See id.* §§ 611.004, .0045; *see also* ORD 613 at 4, 451 at 3. If the requestor does not provide the proper consent, the marked mental health records must be withheld under section 552.101 in conjunction with chapter 611 of the Health and Safety Code.

Section 552.134, which relates to inmates and former inmates of the department, provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 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). Upon review, we agree the remaining information is information about an individual confined as an inmate in a facility operated by the department and is, therefore, subject to section 552.134. We find the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the remaining information under section 552.134(a) of the Government Code.

In summary, if the requestor provides the proper consent, the marked medical and mental health records must be released to him in accordance with the MPA and chapter 611 of the Health and Safety Code.<sup>2</sup> If the requestor does not provide the proper consent, the department must withhold the marked medical and mental health records under section 552.101 of the Government Code in conjunction with the MPA and chapter 611 of the Health and Safety Code. The department must withhold the remaining information under section 552.134 of the Government 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.

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<sup>2</sup>We note because the requestor may have a special right of access to portions of the submitted information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 360913

Enc. Submitted documents

c: Requestor  
(w/o enclosures)