



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

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

OR2011-06895

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# 419393.

The Texas Department of Criminal Justice (the "department") received a request for six categories of information concerning a named inmate. You state some of the requested information has been, or will be, released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code relates to information about inmates and former inmates of the department. This exception provides in relevant part:

- (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] 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). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029 (8). The submitted records consists of information about the requestor's client, a former inmate who was confined in a facility operated by the department. Upon review, we agree the submitted records constitute information about an inmate for purposes of section 552.134. We note that a portion of the submitted information pertains to two incidents of alleged crime involving the inmate. *See id.* § 552.029(8). Under section 552.029(8), basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Thus, with the exception of basic information regarding the two incidents of alleged crime, the department must withhold the submitted information under section 552.134 of the Government Code.

You contend that a portion of the basic information being released is confidential under section 290dd-2 of title 42 of the United States 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. This exception encompasses information that other statutes make confidential. Section 290dd-2 of title 42 of the United States Code provides in part:

(a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a); *see* 42 C.F.R. §§ 2.1 (records of identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of United States are generally confidential), 2.12(b) (discussing when an alcohol abuse or drug program is considered to be federally assisted). Section 290dd-2 makes confidential the records of substance abuse patients that are created and maintained as part of their participation and treatment in a federally assisted substance abuse program. *See* 42 U.S.C. § 290dd-2(a). We understand that the department operates a federally funded substance abuse treatment program. We note that federal law allows for the release of a patient's substance abuse records upon proper written consent. 42 C.F.R. §§ 2.15, .31, .33; *see* 42 U.S.C. § 290dd-2(b)(1). Accordingly, the department must withhold all substance abuse information you have marked subject to section 290dd-2 of title 42 of the United States Code and sections 2.15, 2.31, and 2.33 of title 42 of the Code of Federal Regulations.

In summary, with the exception of basic information regarding the two incidents of alleged crime, the department must withhold the submitted information under section 552.134 of the Government Code. When releasing the basic information under section 552.029, the department must withhold all substance abuse information you have marked subject to section 290dd-2 of title 42 of the United States Code and sections 2.15, 2.31, and 2.33 of title 42 of the Code of Federal Regulations.

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, toll free at (888) 672-6787.

Sincerely,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/sdk

Ref: ID# 419393

Enc. Submitted documents

c: Requestor
(w/o enclosures)