



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 1, 2012

Mr. James Mu  
Assistant General Counsel  
TDCJ - Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2012-08430

Dear Mr. Mu:

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# 456970.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's records. You state the department has released or will release some of the requested information, but claim 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 552.101 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 department], 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 department] 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.

...

(c) The department, on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board or a parole commissioner;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

...

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

*Id.* § 508.313(a), (c), (e), (f); *see id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). You state some of the submitted information is contained in the parole division files of the named former inmate. You explain the submitted information was generated while this individual was subject to release on parole or while a releasee. *Id.* § 508.313(a)(1). You do not indicate this information is subject to release under section 508.313(c) or chapter 62 of the Code of Criminal Procedure. *See id.* § 508.313(c), (e). You also state the submitted information is not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Based on your

representations and our review, we find the information you have marked under section 508.313 is confidential on that ground.

However, we note some of the information at issue consists of the requestor's medical records that are subject to the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part the following:

(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). 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). In addition, because hospital treatment is routinely conducted under the supervision of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records. *See* Open Decision Nos. 598 (1991), 546 (1990). Thus, the requestor may have a right of access to the submitted medical records under the MPA. *See* Occ. Code § 159.005(a)(2). Therefore, there is a conflict between the confidentiality provisions of section 508.313 and the access provisions of the MPA.

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, the MPA is more specific because it is only applicable to medical records. Additionally, the MPA was enacted after the statutory predecessor to section 508.313 of the Government Code. *Compare* Act

of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA), *with* Act of June 21, 1947, 50th Leg., R.S., ch. 452, § 29, 1947 Tex. Gen. Laws 1049, 1057 (enacting statutory predecessor to Government Code section 508.313). Although you also assert the submitted medical records are excepted from disclosure under section 552.134 of the Government Code, a statutory right of access generally prevails over the Act's exceptions to public disclosure. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, we conclude the department may only release the marked medical records in accordance with the MPA. *See* ORD 598. However, the department must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.<sup>1</sup>

You assert the remaining information is excepted under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the department and provides the following:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice 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.

You assert the remaining information pertains to a former inmate confined in a facility operated by the department. Upon review, we agree the remaining information is 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 of the Government Code.

To conclude, the department may only release the medical records we have marked in accordance with the MPA. The department must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The department must withhold the remaining information under section 552.134 of the Government Code.

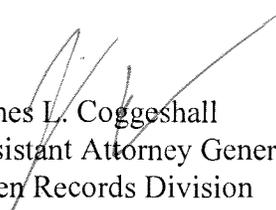
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 456970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)