



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2014

Ms. Jelain Chubb
State Archivist and Director
Archives and Information Services Division
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2014-12198

Dear Ms. Chubb:

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# 529332.

The Texas State Library and Archives Commission (the "commission") received a request for information pertaining to a former death-row inmate.¹ We understand the commission has released some information to the requestor. You claim 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 of the Government Code encompasses information protected by other statutes, such as section 611.002 of the Health and Safety Code, which pertains to mental health records and provides,

(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.

¹Regardless of whether the commission failed to comply with section 552.301 of the Government Code in requesting a ruling, we note section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. See Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the commission's argument under section 552.101.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

(c) This section applies regardless of when the patient received services from a professional.

Health & Safety Code § 611.002. 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. *See id.* § 611.001(2). We understand the submitted records were created by a person who was authorized to practice medicine or a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders at the time the records were created. Upon review, therefore, we find the submitted information consists of records of the identity, diagnosis, evaluation, or treatment of a patient that were created by a professional. Thus, the submitted information constitutes mental health records for purposes of chapter 611 of the Health and Safety Code. Accordingly, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code.²

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)