



June 4, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 79773-0001

OR2001-2298

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147930.

The Texas Department of Public Safety received a request for all information concerning a specific automobile accident. You have submitted copies of medical records and grand jury subpoenas for our review. We presume that to the extent additional responsive information exists, it has been released to the requestor. *See* Gov't Code § § 552.301(a), .302. As for the submitted documents, you claim that some are records of the judiciary and are, therefore, not subject to the Public Information Act (the "act"). You claim that the remaining documents are protected from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the submitted information.

We first address your representation that some of the submitted records were subpoenaed by a grand jury and are, therefore, not subject to the act. The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). Information obtained pursuant to a grand jury subpoena issued in connection with an investigation is within the grand jury's constructive possession and is not subject to the act. *Id.* *See also* Gov't Code § 552.003. However, if an investigation began before any information was submitted to the grand jury, and the grand jury did not formally request or direct all of the governmental body's actions in the investigation, then the information is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by a governmental body is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive

possession when the same information is also held by the governmental body. Open Records Decision No. 513 (1988). After careful review, we agree that some of the documents you seek to withhold were obtained at the direction of the grand jury or pursuant to a grand jury subpoena. Therefore, these documents are not subject to the act.

You claim that the remaining information is protected under section 552.101 in conjunction with the chapter 611 of the Health and Safety Code.<sup>1</sup> Section 611.002 of the Health and Safety Code applies to “[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.” *See also* Health & Safety Code § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We agree that the remaining documents are confidential under section 611.002 and may only be released in accordance with the access provisions of that chapter. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.<sup>2</sup> The documents have been marked accordingly.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

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<sup>1</sup> Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that is made confidential by other statutes.

<sup>2</sup> Because we were able to make a determination under chapter 611 of the Health and Safety Code, we need not address your additional arguments against disclosure.

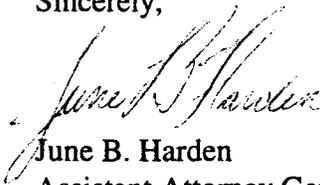
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/DBF/seg

Ref: ID# 147930

Encl. Marked documents

cc: Mr. Ruben Duarte  
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(w/o enclosures)