



May 24, 2002

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2002-2791

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163416.

The Texas Department of Mental Health and Mental Retardation (the “department”) received a request for copies of a specified deceased person’s medical records. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim.

You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.¹ Section 576.005 provides that “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” Health & Safety Code § 576.005. You state that the requested information constitutes records of a mental health facility that would identify a former patient of the facility. You do not inform us of any other state law, nor are we aware of any other law, that would permit the disclosure of this information to this requestor. We, therefore, conclude that the requested information is confidential in its entirety under section 576.005 of the Health and Safety Code. Accordingly, the department must withhold

¹ Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected from disclosure by other statutes.

all responsive information pursuant to section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.²

You also request that this office issue a previous determination allowing the department to withhold medical record information from disclosure in response to future requests for information without the necessity of seeking a ruling from this office. We decline to issue such a previous determination at this time.

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 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

² Section 552.301(d) of the Government Code provides that a governmental body that requests an attorney general decision regarding requested information must provide the requestor within a reasonable time, but not later than the tenth business day after the date of receiving the requestor's written request: (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to disclosure; and (2) a copy of the governmental body's written communication to the attorney general asking for the decision. *See* Gov't Code § 552.301(d). We note that we did not receive sufficient information from the department in order for us to determine whether the department complied with section 552.301(d) in this instance. However, we conclude that we need not address this issue, since we find that the information at issue is deemed confidential by law and must be withheld from disclosure in any case. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) (finding presumption that information is public when governmental body fails to comply with section 552.301 overcome by demonstration that compelling interest exists such as when other source of law makes information confidential).

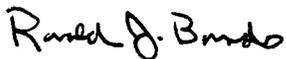
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 163416

cc: Ms. Doris Parker
4603 Sidereal Drive
Austin, Texas 78701
(w/o enclosures)