



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 9, 2003

Mr. Thomas F. Best  
General Counsel  
Texas Commission on Alcohol and Drug Abuse  
P.O. Box 80529  
Austin, Texas 78708-0529

OR2003-2399

Dear Mr. Best:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179089.

The Texas Commission on Alcohol and Drug Abuse (the "commission") received a request for several categories of information related to new programs in Nueces County. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). We have considered your arguments and have reviewed the submitted information.

Under chapter 181 of the Health and Safety Code, a "covered entity" must comply with the privacy standards adopted under HIPAA, including the standards relating to "uses and disclosures of protected health information" and the applicable consent requirements. See Health & Safety Code § 181.101(3). "Protected health information" means individually identifiable health information, including demographic information collected from an individual, that

(A) relates to:

- (i) the past, present, or future physical or mental health or condition of an individual;
- (ii) the provision of health care to an individual; or
- (iii) the past, present, or future payment for the provision of health care to an individual; and

(B) identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Health & Safety Code § 181.001(b)(5). You indicate that the submitted information could be used to identify one or more individuals. However, upon careful review of your arguments and the submitted information, we find that there is no reasonable basis to believe that this information can be used to identify any individual. Therefore, we find that none of the information constitutes “protected health information” for purposes of chapter 181. See Health & Safety Code § 181.001(b)(5). Accordingly, the commission is not required to comply with the privacy standards of HIPAA with respect to this information. Thus, HIPAA does not protect the submitted information from disclosure, and it must be released.

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).

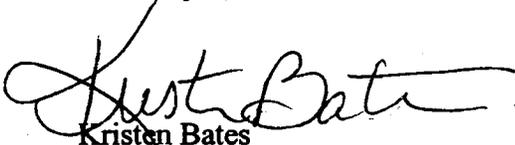
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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 Dep’t of Pub. 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 179089

Enc. Submitted documents

c: Mr. Philip W. Rhoades, Ph.D.  
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(w/o enclosures)