



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 22, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2003-2659

Dear Mr. Hall:

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# 179824.

The Texas Department of Criminal Justice ("TDCJ") received a request for information pertaining to the "emergency medical reprieve for [a named individual]." You assert the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we note the Medical Practice Act (the "MPA") may govern some of the submitted information. Section 159.002 of the MPA provides, in part, as follows:

(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.

Occ. Code § 159.002(b), (c). The MPA permits disclosure of MPA records to the patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Occ. Code §§ 159.003, .004, .005. The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). To the extent that the submitted information contains MPA records, TDCJ must release those records only in accordance with the MPA. Open Records Decision No. 598 (1991).

Next, we address your assertion that section 552.134 of the Government Code excepts the submitted information from disclosure. Section 552.134(a) states the following:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). You inform us, and our review of the documentation confirms, the submitted information concerns an inmate confined in a facility operated by TDCJ. Therefore, section 552.134 of the Government Code governs the information at issue.

As permitted by the Act, we have received comments from the requestor, a relative of the inmate, in which she asserts section 552.023 of the Government Code provides her a right of access to the submitted information. *See* Gov't Code § 552.304 (permitting interested third party to submit comments explaining why information should or should not be released). Section 552.023 gives a person or a person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023. However, section 552.134 of the Government Code protects the interests of the governmental body. Consequently, even assuming the requestor meets the definition of the person's authorized representative, section 552.023 does not provide the requestor a special right of access to the submitted information.

Nevertheless, under section 552.029 of the Government Code, certain specified information about the inmate at issue, including the general state of health or the nature of the critical illness suffered by the inmate, must be released. *See* Gov't Code § 552.029(1). Therefore, TDCJ must withhold the requested information under section 552.134 of the

Government Code. However, TDCJ must release information about the inmate as required by section 552.029 of the Government Code.

In summary, TDCJ must release MPA records, if any, only in accordance with the MPA. TDCJ must release certain information concerning the inmate at issue pursuant to section 552.029(1) of the Government Code. TDCJ must withhold the remainder of the requested information under section 552.134 of the Government Code.

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).

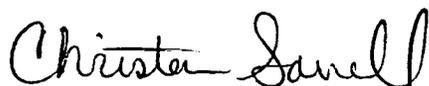
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 179824

Enc: Submitted documents

c: Ms. Barbara Hill
P.O. Box 256
Goodrich, Texas 77335
(w/o enclosures)