OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 28, 2003

Mr. Don Rogers
Communications Director
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2003-3611

Dear Mr. Rogers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181723.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information pertaining to a former patient of the Austin State Hospital. You claim that the requested 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 576.005 of the Health and Safety Code. 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." Gov't Code § 576.005.

You represent to this office that the requested information consists of records of the Texas State Lunatic Asylum, a mental health facility which is now known as the Austin State Hospital (the "Hospital"). You state that the Hospital is a mental health facility that the department owns and operates. *See id.* § 532.001; *see also id.* § 571.003(12) (defining "mental health facility"). You also state that the records at issue identify a former patient of

the facility. Based on our review of the submitted information, we agree that the submitted information identifies a former patient of a mental health facility. We therefore find that the records are deemed confidential under section 576.005 of the Health and Safety Code. You do not inform us of any other state law, nor are we aware of any other law, that would permit the disclosure of these records to this requestor. *See id.* § 611.004 (authorizing mental health professional to disclose mental health records in certain circumstances). Accordingly, the department must withhold the requested information from disclosure based on section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.[1]

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

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[1]In light of our conclusion, we need not address your remaining arguments.

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,

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 181723

Enc: Submitted documents

c: Ms. Susan Medlin
6309 Hesketh Drive
Bakersfield, California 93309
(w/o enclosures)