



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2003

Ms. Enid A. Wade  
Naman Howell Smith & Lee  
P.O. Box 1470  
Waco, Texas 76703

OR2003-7099

Dear Ms. Wade:

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# 188121.

The County of Bell (the "County"), which you represent, received a request to view all records regarding a named psychologist and financial transactions with the County. You state that the County has "had additional communication from the requestor" in which she "appears to make clear that the only documents she is seeking . . . are those records showing how much [the named psychologist] charged and how much he was paid for his work[.]" In response to the narrower request, you inform us that you have released most of the requested information to the requestor. However, you assert a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, we acknowledge our receipt of comments from the requestor, as permitted by the Act. *See* Gov't Code § 552.304 (permitting interested third party to submit comments explaining why information should or should not be released). We reviewed the information you submitted and considered the exception you claim. We also considered comments submitted by the requestor.

Initially, we note that you have redacted certain information from the submitted documents. You do not assert, nor has our review of our records indicated, that this office has granted a previous determination permitting the County to withhold any such information without seeking a ruling from this office. Because we can discern the specific category of information that you have redacted, being deprived of this information does not inhibit our

ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than to order release of the redacted information. See Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested").

Next, we note that some of the submitted information is subject to section 552.022 of the Government Code. This provision provides, in pertinent part, as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted documents include information relating to the expenditure of public or other funds by a governmental body subject to section 552.022(a)(3). The County must release such information unless it is confidential under other law. See Gov't Code § 552.022(a)(3). As you claim section 552.101, which constitutes other law for purposes of section 552.022 of the Government Code, we will address your arguments for this information, as well as the remaining documents, under this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions of other statutes. You claim that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") governs some of the submitted information. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. See Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164; see also Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. See 45 C.F.R. Pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

Section 160.103 defines a covered entity as a health plan, a health clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a

transaction covered by this subchapter. 45 C.F.R. § 160.103. A health care provider, as defined by section 160.103, means a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. 45 C.F.R. § 160.103. Section 160.102 makes the privacy standards applicable to health care providers. 45 C.F.R. § 160.102. In its initial brief, the County states that “[a]s we understand the statute, [the County] is a covered entity[.]” In response to a request by this office to provide additional information concerning its status as a covered entity, the County timely submitted another brief addressing this issue. See Gov’t Code § 552.303. In this brief, you explain that the County operates a correctional institution that “furnishes health care in the normal course of housing inmates [and] obtains protected health information from incarcerated individuals[.]” Further, you indicate that in this capacity, the County furnished mental health services in conjunction with the named psychologist to juvenile offenders within the custody of the County’s correctional institution. Therefore, you assert that the County is a health care provider as defined at section 160.103 of title 45 of the Code of Federal Regulations, because it is a “. . . person or organization who furnishes, bills, or is paid for health care in the normal course of business.” See also 45 C.F.R. § 164.512(k)(5)(ii) (covered entity that is correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed). Finally, you argue that even if the County is not a covered entity, the County would still be a business associate of the named psychologist and would be prohibited from disclosing the information at issue. However, you do not inform us, nor is it apparent from the submitted information, whether the County transmits health information in electronic form in connection with a covered transaction. See 45 C.F.R. §§ 160.102, .103 (defining covered entity and electronic media). Moreover, you have not sufficiently explained how the County furnishes health care in the normal course of business for purposes of HIPAA. Therefore, we find that the County has not met its burden of adequately establishing that it is a covered entity under HIPAA. Further, we find that the County has not adequately established that it is a business associate of a covered entity with respect to the information at issue. See 45 C.F.R. §§ 160.103 (defining business associate), 164.308(b)(1), 164.314 (setting forth requirements for business associates of covered entities). Accordingly, we are unable to conclude that the submitted information at issue is excepted from disclosure under section 552.101 in conjunction with HIPAA.

However, we note that section 552.101 also encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders,

attempted suicide, and injuries to sexual organs. *Id.* at 683. After reviewing the submitted information, we find that the names of the juvenile offenders you have redacted are protected by common-law privacy. Thus, the County must withhold the redacted names under section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make this determination, we need not address your arguments under section 58.007 of the Family Code.

Last, we note section 552.136 of the Government Code governs some of the submitted information. This provision states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. In this case, the submitted information contains bank account numbers. Therefore, the County must withhold the account numbers, which we have marked, under section 552.136 of the Government Code.

In summary, the County must withhold the information you redacted under section 552.101 of the Government Code in conjunction with common-law privacy. The County must withhold the account numbers we have marked under section 552.136 of the Government Code. The County must release the remainder of the submitted information to the requestor.

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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 188121

Enc: Submitted documents

c: Ms. Laretta Matthews  
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(w/o enclosures)