



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2004

Mr. David Caylor
City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2004-0558

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195104.

The City of Irving (the "city") received a request for all documents which pertain to the requestor from all city departments. You state that the city has released to the requestor the requested information with the exception of two documents, which you have marked as Exhibit A and Exhibit B. You claim that these two documents are excepted from disclosure under sections 552.023(b), 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You raise section 552.101 of the Government Code in conjunction with section 611.0045(b) of the Health and Safety Code. Section 552.101 of the Government Code excepts from disclosure information made confidential by law, including information made confidential by statute. *See Gov't Code* § 552.101. Section 611.002 of the Health and Safety Code makes confidential "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See Health & Safety Code* § 611.002(a); *see also id.* § 611.001 (defining "patient" and "professional"). These confidential communications and records may not be disclosed except as provided by section 611.004 or 611.0045. *See id.* § 611.002(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See Open Records Decision No. 565 (1990)*. Section 611.0045 reads in pertinent part as follows:

(a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's record. The statement must specify the portion of the record to which access is denied, the reason for denial and the duration of the denial.

Health & Safety Code § 611.0045(a)-(c). You state that the professional here denied the requestor access to the two documents at issue. We find that Exhibits A and B are records "of the identity, diagnosis, evaluation, or treatment of a patient that is created or maintained by a professional," and thus, are covered by the Health and Safety Code access provisions. Therefore, we agree that Exhibits A and B may not be released except in accordance with section 611.0045 of the Health and Safety Code.¹ Health & Safety Code § 611.002(b); *see id.* § 611.0045.

You raise section 552.023(b) of the Government Code, which reads as follows:

A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Gov't Code § 552.023(b). Section 552.023(b) is not an exception to required public disclosure. Rather, it prohibits a governmental body from denying on privacy grounds requested information to the person about whom the information relates. The provision is nevertheless relevant here because the requestor is seeking information about himself and the city is denying the requestor access to portions of the information. However, the denial in this case based on the professional's determination that access to the information would be harmful to the requestor's physical, mental, or emotional health is not a denial based on the patient's privacy. The denial is based on a law, section 611.0045, that protects more than

¹In light of our conclusion under the Health and Safety Code, we need not address your section 552.103 claim.

just the patient's privacy interests. Thus, the denial in this circumstance is not contrary to section 552.023(b).

In summary, the city must not release Exhibits A and B except in accordance with section 611.0045 of the Health and Safety 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 195104

Enc: Submitted documents

c: Mr. Zachary S. Havens
1319 Meyers Road
Irving, Texas 75060
(w/o enclosures)