



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2005

Ms. Karen Hattaway
Open Records Attorney
Texas Department of Aging and Disability Services
701 West 51st Street
Austin, Texas 78714

OR2005-02508

Dear Ms. Hattaway:

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# 220580.

The Texas Department of Aging and Disability Services (the "department") received a request for information regarding a named former resident of the Austin State School. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 595.001 of the Health and Safety Code, which provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004." Health & Safety Code § 595.001. Subsection 595.003(a)(4) provides that if the confidential records pertain to a deceased individual, the records may be disclosed in accordance with the

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

prior written consent of: “(A) either the executor or administrator of the deceased’s estate; (B) or, if an executor or administrator has not been appointed, the deceased’s spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.” *Id.* § 595.003(a)(4). Section 595.004 provides for the release of confidential records to the person to whom the records pertain, or a parent of a minor or a guardian of the person. *See Id.* § 595.004. Subsection 595.005(d) provides that confidential records may be disclosed without the prior written consent required in subsection 595.003 if disclosure is authorized by a court order granted upon a showing of good cause. *See Id.* § 595.005(d)

You state that the submitted information consists of “records of the identity, diagnosis, evaluation, and treatment of a person that are maintained in connection with the Austin State School’s provision of mental retardation services to the person.” Because the individual at issue is deceased, the release provision of section 595.004 does not apply. Furthermore, you state that “[t]he requestor has not provided any information that would indicate she has a right of access to the records under either section 595.003(a)(4) or section 595.005(d).” Having considered your representations and the submitted information, we conclude that the submitted information is confidential in its entirety under section 595.001 of the Health and Safety Code. Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code as information made confidential by law.²

Finally, the department requests that this office grant a previous determination allowing it to withhold records maintained by the State Schools under section 552.101 of the Government Code in conjunction with 595.001 of the Health and Safety Code, unless the requestor has a right of access under chapter 595 of the Health and Safety Code. We decline to do so at this time. Accordingly, 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

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 220580

Enc. Submitted documents

c: Ms. Carolyn Dann Shipman
18905 East Highway 6
Alvin, Texas 77511
(w/o enclosures)