



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2005

Mr. John C. West
General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
P. O. Box 13084
Austin, Texas 78711

OR2005-04775

Dear Mr. West:

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# 225366.

The Texas Department of Criminal Justice, Office of the Inspector General (the "OIG") received a request for information pertaining to an employment complaint involving the requestor's client. You state that the OIG is releasing most of the requested information but claim that some information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents contain a medical record, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides 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). 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). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the submitted medical record that is subject to the MPA.

We also note that some information is subject to section 611.002 of the Health and Safety Code, which applies to “[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 also Health & Safety Code § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. See Open Records Decision No. 565 (1990). We have marked the mental health record that is confidential under section 611.002 and may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); see *id.* §§ 611.004, 611.0045.

We now turn to your claim under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution.” Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.).

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. See, e.g., Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. See Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You state that release of “information regarding Unit layout and construction . . . could be used by others in the planning and execution of a crime.” You also contend that release of “incident scene description, photographs and schematic drawings are excepted from

disclosure under §552.108 . . . since they deal with the detection, investigation and prosecution of the alleged crime.” Having considered your arguments and representations and having reviewed the information at issue, we find that release of some of the submitted information you seek to withhold would interfere with law enforcement. We have marked this information, which may be withheld pursuant to section 552.108(b)(1). However, we find that you have not explained, nor is it apparent to this office, how release of the remaining information you seek to withhold would interfere with the detection, investigation, or prosecution of crime. Accordingly, we determine that none of the remaining submitted information may be withheld under section 552.108.

Lastly, you claim that some of the submitted information is subject to section 552.117 of the Government Code. Section 552.117(a)(3) excepts from public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current and former employees of the Texas Department of Criminal Justice, regardless of whether the employees complied with section 552.1175.¹ We note, however, that section 552.117(a)(3) deems information confidential only in order to protect individuals’ privacy. Therefore, the requestor has a special right of access pursuant to section 552.023 to his client’s information that would otherwise be excepted from disclosure under section 552.117(a)(3). *See* Gov’t Code §§ 552.023. Accordingly, you must withhold the home addresses, home telephone numbers, social security numbers, and family member information of current or former employees other than the requestor’s client.

In summary: (1) the medical record we have marked may only be released in accordance with the MPA; (2) the mental health record we have marked may only be released in accordance with chapter 611 of the Health and Safety Code; (3) the OIG may withhold the information we have marked pursuant to section 552.108(b)(1) of the Government Code; (4) other than information pertaining to the requestor’s client, the home addresses and telephone numbers, social security numbers, and family member information of current or former Texas Department of Criminal Justice employees must be withheld pursuant to section 552.117(a)(3) of the Government Code; and (5) the remaining submitted information must be released 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

¹We note that Open Records Letter No. 2005-1067(2005) was recently issued and serves as a previous determination for this type of information maintained by the Texas Department of Criminal Justice.

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, 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 225366

Enc. Submitted documents

c: Mr. Rod LaGrone
LaGrone Law Offices
P. O. Box 21
Texarkana, Texas 75504-0021
(w/o enclosures)