



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2005

Mr. Michael Mondville
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, TEXAS 77342

OR2005-11463

Dear Mr. Mondville:

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# 238342.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named former inmate in the department's Estelle Unit who is now deceased. You state you will make some information available to the requestor but claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor has clarified in his submitted comments that he is not requesting information pertaining to Texas peace officers. Thus, the identification cards for Texas peace officers in the submitted information are not responsive to the instant request. The submitted information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You argue that the submitted

information includes records pertaining to substance abuse treatment that are confidential pursuant to federal law.¹ Section 290dd-2 of title 42 of the United States Code provides in relevant part the following:

(a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a); *see also* 42 C.F.R. § 2.1 (records of identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of United States are generally confidential). You inform us that the records at issue are from a department program funded in part by federal funds.

Although you assert that the relevant federal regulations “allow for disclosure only for medical emergencies, research or audit activities, and upon order of the court,” we note that federal law allows for the release of a deceased patient’s substance abuse records upon proper written consent. 42 C.F.R. §§ 2.15, .31, .33; *see* 42 U.S.C. § 290dd-2(b)(1). Accordingly, these substance abuse records, which we have marked, may be released only as provided under section 290dd-2 of title 42 of the United States Code and sections 2.15, 2.31, and 2.33 of title 42 of the Code of Federal Regulations.

The department asserts that the remaining information is excepted under section 552.134 of the Government Code. Section 552.134 relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

¹Although you assert that the submitted substance abuse treatment records are confidential under section 290ee-3 of title 42 of the United States Code, we note that this section has been omitted. The confidentiality of substance abuse and mental health records is currently governed by part D of subchapter III-A of chapter 6-A of title 42 of the United States Code (42 U.S.C. §§ 290dd–290dd-3). Pub. L. 102–321, Title I, § 131, July 10, 1992, 106 Stat. 366.

Gov't Code § 552.134(a). Upon review, we conclude that the remaining submitted information consists of information about a former inmate who was confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, the remaining submitted information is excepted from disclosure under section 552.134 of the Government Code and must be withheld.²

To conclude, the marked nonresponsive information need not be released. The substance abuse records we have marked may only be released in accordance with section 290dd-2 of title 42 of the United States Code and sections 2.15, 2.31, and 2.33 of title 42 of the Code of Federal Regulations. The department must withhold the remaining information under section 552.134 of the Government 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, 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

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

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 Office of the Attorney General 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. 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,



Ramsey Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 238342

Enc. Submitted documents

c: Mr. Quincy McNeal
903 US Hwy. 80 East, Apt. #1202
Mesquite, TX 75150
(w/o enclosures)