ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2006

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

OR2006-00902

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# 240798.

The Texas Department of Criminal Justice (the "department") received a request for a specified inmate's records. You state that you will release some of the requested information to the requestor, but claim that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

First, we note that the submitted information consists of the minutes of public meetings of a governmental body. The minutes of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code § 551.022 (minutes of open meetings are public records and shall be available for public inspection and copying upon request). When a statute expressly makes information public and mandates its release, the information generally cannot be withheld from disclosure under one of the exceptions in Subchapter C of chapter 552 of the Government Code. *See* Open Records Decision No. 623 at 4 (1994) (exceptions to public disclosure under chapter 552 of the Government Code generally do not apply to information that another statute expressly makes public). We note, however, that section 551.022, a state statute, may be preempted by federal law to the extent it conflicts with that federal law. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995). Therefore, we will address the department's arguments under section 552.101 and federal law.

Section 552.101 of the Government Code 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. Section 290dd-2 of title 42 of the United States Code provides in relevant part:

> (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 state that the department operates a federally funded substance abuse treatment program. You do not inform us, and there is no documentation reflecting, that the department received written consent signed by the inmate authorizing the department to release these records to the requestor.[1] Based upon your representations and our review, we conclude that the department must withhold the information it has marked under section 552.101 in conjunction with section 290dd-2 of title 42 of the United States 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

---

[1]Section 290dd of title 42 to the United States Code contains a release provision, which provides in part:

> (b) Permitted disclosure
>
> > (1) Consent. The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

42 U.S.C. § 290dd-2(b)(1).

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 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,

Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 240798

Enc: Submitted documents

c: Ms. Lori K. Redmond
Attorney at Law
7100 Regency Square, Suite 161
Houston, Texas 77036
(w/o enclosures)