



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2006

Mr. William J. Philbin
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P. O. Box 13084
Austin, Texas 78711

OR2006-01438

Dear Mr. Philbin:

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# 242244.

The Texas Department of Criminal Justice (the "department") received a request for the department's inmate records as well as records held by the department parole division that pertain to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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).

You inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Record Letter No. 2004-6535 (2004). As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold or release the requested information in accordance with Open Record Letter No. 2004-6535. *See* Open Records Decision No. 673 (2001) (so long

¹Although you also initially raised sections 552.107, 552.108, 552.111, and 552.134 of the Government Code, you have submitted no arguments under these exceptions.

as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will next address the information you have submitted.

We note a portion of the submitted information constitutes medical records pertaining to the requestor, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990).

Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The 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). We have marked the submitted information that constitutes medical records of the requestor. These medical records may only be released in accordance with the MPA.

You assert that the remaining submitted information is made confidential by section 508.313 of the Government Code. Section 508.313(a)(2) of the Government Code makes confidential

“[a]ll information obtained or maintained” by the department that relates to a “releasee,” meaning a person released on parole or to mandatory supervision. *See* Gov’t Code § 508.001(a)(9). You state that the information at issue “relates to an offender who was released on mandatory supervision, or parole,” and that all of the submitted information is from the department’s Parole Division. However, the requestor argues that section 508.313 does not apply in this instance because he is no longer on parole or mandatory supervision. We disagree. Although the individual is not currently on parole or mandatory supervision, section 508.313(a)(2) applies because the submitted information relates to a person who was released on parole or mandatory supervision. We therefore conclude that this information is made confidential by section 508.313(a)(2) of the Government Code and that none of the release provisions of that statute apply in this instance. *See* Gov’t Code §§ 508.313(c)-(f). Accordingly, the department must withhold the remaining submitted information pursuant to section 552.101 of the Government Code.

In summary, the department must continue to rely on Open Record Letter No. 2004-6535 as a previous determination and withhold or release the requested information in accordance with that ruling. We have marked the information that may only be released in accordance with the MPA. The remaining submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 508.313(a) 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 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 A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 242244

Enc. Submitted documents

c: Mr. Thomas Retzlaff
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(w/o enclosures)