



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 24, 2006

Mr. Paul J. Mascot  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49th Street, M-525  
Austin, Texas 78756-3199

OR2006-02903

Dear Mr. Mascot:

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# 244783.

The Texas Department of State Health Services (the "department") received a request for the Rusk State Hospital daily admission log for a specified period time, as well as yellow sheets for white male patients. You state that you have or will release some of the requested information but state that the submitted 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.<sup>1</sup>

Initially, we note that the requestor, in his request for information, allows the department to withhold patients' names. Thus, any patient names are not responsive to the present request. We do not address your arguments for the nonresponsive information, which we have marked, and it need not be released.

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<sup>1</sup>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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information other statutes make confidential. Gov’t Code §552.101. Section 576.005 of the Health and Safety Code provides that “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” You represent to this office that the requested information constitutes records of the Rusk State Hospital, which is a mental health facility. Upon review of your representations and the submitted information, we conclude that some of the submitted information is confidential under section 576.005 of the Health and Safety Code. You indicate that none of the exceptions to confidentiality for these records are applicable in this instance. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code as information made confidential by law. The remaining responsive information, however, does not directly or indirectly identify a present, former, or proposed patient. Therefore, that information is not confidential under section 576.005, and it must be released.

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*, 342 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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 244783

Enc. Submitted documents

c: Mr. Bruce Barnes  
2105 Miller Drive  
Tyler, Texas 75701  
(w/o enclosures)