



ATTORNEY GENERAL OF TEXAS
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Ms. Carla Cordova
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Mr. John C. West
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Texas Department of Criminal Justice
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OR2006-03505

Dear Ms. Cordova and 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# 245812.

The Texas Department of Criminal Justice (the "department") received a request for the incident report regarding a specific incident that took place on January 4, 2006 at Middleton Unit. The department and the department's Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG indicates that it will release some of the requested information. The department claims, however, that the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG claims that the remaining information it has submitted is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Section 552.134 of the Government Code 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.

Gov't Code § 552.134(a). The department claims the information it has submitted pertains to an inmate confined in a facility operated by the department. Upon review, we agree and find that the exceptions in section 552.029 of the Government Code are not applicable. Therefore, the department must withhold the information it has submitted under section 552.134(a) of the Government Code.

The OIG claims that its submitted information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the records at issue relate to “a case file that is currently open and under investigation by the OIG investigator, with the possibility that a criminal case will be subsequently opened.” We note, however that section 552.108(a)(1) generally applies to information that pertains to criminal investigations that are currently pending. See Gov't Code § 552.108(a)(1). Thus, based on your representation that the submitted investigation records do not pertain to a criminal investigation, we find that section 552.108(a)(1) is not applicable and OIG may not withhold the information it has submitted pursuant to section 552.108(a)(1) of the Government Code. See generally *Morales v. Ellen*, 840 S.W.2d 539, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied); see also Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception).

The OIG claims that some of the information it has submitted consists of medical records that are excepted under section 552.101 of the Government Code. 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. Access to medical records is governed by the Medical Practice Act (the “MPA”). See Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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. Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision Nos. 598 (1991). 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). Upon review, however, we find that the information at issue consists of the investigation documents of the OIG and does not consist of medical records or information obtained from medical records. Accordingly, none of the information at issue may be withheld under the MPA. As the OIG does not raise any other exceptions against disclosure for the information it has submitted, it must be released.

In summary, the department must withhold its submitted information under section 552.134 of the Government Code. The OIG must release its submitted information.

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 245812

Enc. Submitted documents

c: Ms. Cindy March
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(w/o enclosures)