



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2006

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2006-08876

Dear 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# 255941.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified incident. The department informs us that it will release some of the requested information with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ The department also states that it will withhold social security numbers pursuant to section 552.147 of the Government Code.² You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers and family member information of current or former employees of the Texas Department of Criminal Justice, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Initially, we address the submitted medical record, access to which is governed by the Medical Privacy 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). 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). As an authorized representative for the individual for whom the marked information pertains, the requestor has a right of access to this marked information. The department may only release the submitted medical record, which we have marked, in accordance with the MPA. See Open Records Decision No. 598 (1991).

Section 552.134 of the Government Code relates to information about inmates of the department and provides in relevant part as follows:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] 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). Section 552.134 is explicitly made subject to section 552.029 of the Government Code, which provides in relevant part as follows:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving an inmate.

Id. § 552.029(8). Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information under predecessor to section 552.108). In this instance, the remaining information pertains to an investigation of an incident involving the use of force against an inmate and an alleged crime involving inmates. You state that the department will release basic information regarding this incident pursuant to section 552.029(8). We conclude the department must withhold the remaining submitted information under section 552.134 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the department may only release the submitted medical record, which we have marked, in accordance with the MPA. Other than basic information which you state you will release, the remaining information must be withheld 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 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 255941

Enc. Submitted documents

c: Mr. Bart Behr
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(w/o enclosures)