ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2006

Ms. Carla M. Cordova
Assistant General Counsel
TDCJ–Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2006-12474

Dear Ms. Cordova:

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# 262773.

The Texas Department of Criminal Justice (the "department") received two requests from the same requestor for a named death row inmate's "social and criminal history" and any and all parole records from the inmate's prior incarcerations. You state that the department will release records from the inmate's death row file. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 made confidential by statute,

including 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). We have marked a submitted document which is a medical record subject to the MPA. We note that an authorized representative for the individual for whom the marked information pertains has a right of access to this marked information. Nevertheless, the department may only release the marked document as provided by the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 also encompasses section 508.313 of the Government Code, which provides in part:

> (a) All information obtained and maintained [by the Texas Department of Criminal Justice], including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:
>
> > (1) an inmate of the institutional division [of the Texas Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;
> >
> > (2) a releasee; or
> >
> > (3) a person directly identified in any proposed plan of release for an inmate.

> (b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.
>
> (c) The [Texas Department of Criminal Justice], on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection (a) to:
>
> > (1) the governor;
> >
> > (2) a member of the [B]oard [of Pardons and Paroles] or a parole commissioner;
> >
> > (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; or
> >
> > (4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

Gov't Code § 508.313(a)-(c). You inform us that the information you have marked is maintained by the department's parole division as a part of the inmate's parole file. After reviewing your arguments and the submitted information, we agree that the information you have marked is made confidential by section 508.313 and may only be released in accordance with that statute. Furthermore, the requestor is not an entity authorized by section 508.313(c) to obtain this information. Accordingly, the department must withhold the information you have marked under section 552.101 in conjunction with section 508.313 of the Government Code.

You claim that the remaining submitted information is excepted from disclosure under section 552.134 of the Government Code. Section 552.134 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). You state that the remaining information at issue concerns an inmate while he was incarcerated with the department for previous non-capital offenses and is not information about an inmate sentenced to death. Because the information at issue was not created at a time when the inmate was sentenced to death and is not maintained in the

inmate's current death row file, we find that section 552.134(a) is applicable and this information must be withheld under section 552.134(a) of the Government Code.

In summary, the medical record we have marked may only be released in accordance with the MPA. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The department must withhold the remaining information at issue 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,

Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 262773

Enc. Submitted documents

c: Mr. Jonathan Kerr
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(w/o enclosures)