



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2007

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030
MC-W-615

OR2007-00024

Dear Mr. Norbraten:

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# 268333.

The Texas Department of Aging and Disability Services (the "department") received a request for all records pertaining to a specified investigation, including a copy of a specified rule. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, we note that the department did not submit a copy of the requested rule. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this part of the request existed on the date that the department received the instant request, we assume that the department has released it to the requestor. If the department has not released any such information, the department must release it to the requestor at this time.

¹We assume that the 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.

See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We now address your arguments for the submitted information. Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses section 595.001 of the Health and Safety Code, which provides that “[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.” Health & Safety Code § 595.001. You state that the submitted records are “records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the Denton State School’s provision of mental retardation services to the person.” You further state that the requestor has not demonstrated that she has a right of access to the submitted records under section 594.003 or 594.004 of the Health and Safety Code. Having considered your representations and reviewed the submitted records, we conclude that a portion of these records, which we have marked, are confidential under section 595.001 of the Health and Safety Code. Accordingly, the department must withhold the marked information under section 552.101 of the Government Code as information made confidential by law.² However, section 595.001 does not apply to the remaining information at issue; accordingly, the remaining information may not be withheld under section 552.101 on this basis.

You also claim that the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. Section 576.005 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.” Health & Safety Code § 576.005. Upon review, we find that none of the remaining information directly or indirectly identifies a present, former, or proposed patient. Therefore, the department may not withhold the remaining information pursuant to section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code. The remaining submitted information must be released to the requestor.

²As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure of this information.

You also ask this office to issue a previous determination permitting the department to withhold information pertaining to state school clients under Chapter 595 of the Health and Safety Code. We decline to issue such a previous determination at this time. Accordingly, 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).

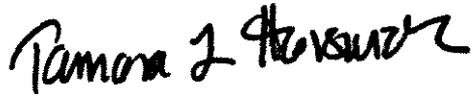
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, slightly slanted style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/jww

Ref: ID# 268333

Enc. Submitted documents