



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2007

Mr. Thomas D. McClure  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2007-01794

Dear Mr. McClure:

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# 271287.

Terrell State Hospital received a request for information relating to a named individual. 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 have reviewed the information you submitted.

We first note that when a governmental body asks this office to decide whether requested information is excepted from public disclosure, it must comply with the deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(a)-(b), (d)-(e). If the governmental body fails to do so, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). This request for a decision presents issues with regard to your compliance with section 552.301. However, your claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure. Therefore, we need not determine whether you have complied with section 552.301 in requesting this decision and will consider your arguments.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 576.005 of the Health and Safety Code, which makes confidential records of a mental health facility that directly or indirectly identify a present, former, or proposed patient unless disclosure is permitted by other state law. You inform us that the submitted information consists of records of a mental health facility that identify a patient. Having reviewed the information at issue, we agree that it falls within the scope of section 576.005. You inform us that there is no other state law that would permit disclosure of the information at issue in this instance. We therefore conclude that you must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.<sup>1</sup>

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).

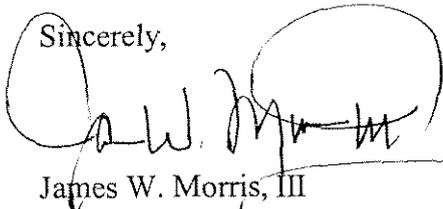
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<sup>1</sup>As we are able to make this determination, we need not address your other arguments against disclosure.

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, appearing to read 'James W. Morris, III', is written over a horizontal line. The signature is stylized and somewhat cursive.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jww

Ref: ID# 271287

Enc: Submitted document

c: Ms. Barbara Chedester  
4224 West 38<sup>th</sup> Avenue  
Amarillo, Texas 79109  
(w/o enclosures)