



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2007

Mr. S.A. "Drew
" Gibbs
Assistant County Attorney
Henderson County
100 East Tyler Street, Room 100
Athens, Texas 75751

OR2007-05112

Dear Mr. Gibbs:

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# 277461.

The Henderson County Sheriff's Office (the "sheriff") received a request for: (1) medical records regarding a named inmate; (2) documents evidencing the purchase of, storage of, and distribution of medications at the county jail; (3) documents evidencing the destruction of certain medications for the last five years; (4) copies of requests made by the named inmate for psychiatric medications while at the county jail; (5) complaints made during the last five years by inmates at the county jail regarding the failure to provide them with medication; and (6) documents evidencing the procedures used by county jail staff to detect, treat, evaluate, care, and medicate inmates with mental illnesses or psychiatric conditions. You state you have provided the requestor with information responsive to items 1, 2, 4, and 6 of the request. However, you claim that information responsive to items 3 and 5 is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative 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.

You assert that the information submitted for our review (Exhibits 3, 4, 5, and 6) consists of medical records made confidential under section 552.101 in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part that "[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 [Chapter 159]." Occ. Code § 159.002(b). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343(1982). Upon review of Exhibits 3, 4, 5, and 6, we find that the submitted information does not constitute a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or maintained by a physician. Accordingly, we determine that Exhibits 3, 4, 5, and 6 do not constitute medical records subject to the MPA.

However, section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The sheriff must withhold the information we have marked in Exhibits 3, 4, 5, and 6 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is either not highly intimate or embarrassing, or it is of legitimate public interest. Thus, the remaining information must be released to the requestor.

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,



Aries Solis
Assistant Attorney General
Open Records Division

AS/eeg

Ref: ID# 277461

Enc. Submitted documents

c: Mr. Nolan B. Wickel Jr.
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Athens, Texas 75751
(w/o enclosures)