



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2007

Mr. Christopher C. Lopez  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2007-05273

Dear Mr. Lopez:

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# 277608.

The Department of State Health Services (the "department") received a request for records pertaining to a named individual who was a patient at the North Texas State Hospital. 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.

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 other statutes. Section 576.005 of the Health and Safety Code 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 directly or indirectly identify a former patient. Upon review, we agree and find that the confidentiality provision of section 576.005 applies to the submitted information. You state that there is no exception in state law that would permit disclosure of this information in this instance. Accordingly, the department

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>

You also ask this office to issue the department a previous determination authorizing it to withhold, under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code, records of a mental health facility that identify a deceased patient. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the department must withhold this type of information under section 552.101 of the Government Code as long as other state law does not permit access to the information. *See, e.g.,* Occ. Code § 159.002 *et seq.* (medical records); *id.* § 201.402 *et seq.* (chiropractic records); *id.* § 258.102 *et seq.* (dental records); Health & Safety Code § 611.002 *et seq.* (mental health records); 25 T.A.C § 1.207 (regarding access to certain information otherwise made confidential under section 261.201 of the Family Code). So long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information requested of the department. *See* Open Records Decision No. 673 (2001).

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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments regarding disclosure.

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,



M. Alan Akin  
Assistant Attorney General  
Open Records Division

AA/mcf

Ref: ID# 277608

Enc. Submitted documents

c: Ms. Pam Buck  
1101 Glenaire  
Mena, Arkansas 71953  
(w/o enclosures)