

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2007

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

OR2007-07700

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 #281989.

The Texas Department of Aging and Disability Services (the "department") received a request for a list of all seventeen people who died at the Lubbock State School between June 2005 and December 2006. You claim that the submitted 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. We have also received correspondence from the requestor's attorney. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 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 document consists of "records of the identity, diagnosis, evaluation, and treatment of a person that are maintained in connection with the [Lubbock] 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 record under section 595.003 or section 595.004 of the Health and Safety Code. We note, however, that section 595.001 only applies to the records that are maintained in connection with the performance of a program relating to mental retardation; it is not applicable to the contents of other records, even though those documents may contain the same information as the department's own records. *See* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). You do not explain how the document at issue is a record maintained in connection with the performance of a program relating to mental retardation. Thus, we find you have failed to establish that the submitted document is confidential under section 595.001 of the Health and Safety Code. Accordingly, the submitted document may not be withheld under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, the submitted document 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 281989

Enc. Submitted documents

c: Ms. Terri Langford
Reporter/State Desk
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(w/o enclosures)

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Houston, Texas 77002
(w/o enclosures)

TEXAS DEPARTMENT OF AGING AND
DISABILITY SERVICES,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF THE STATE OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§
§ 98TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JAN 09 2008
At *A.S.I.* M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Texas Department of Aging and Disability Services (DADS) and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Terri Langford, was sent reasonable notice of this setting and of the parties' agreement that DADS must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The names of 17 people who died at the Lubbock State School between June

~~2006~~2005 and December 2006 are excepted from disclosure by Tex. Gov't Code § 552.101, in conjunction with Tex. Health & Safety Code § 595.001;

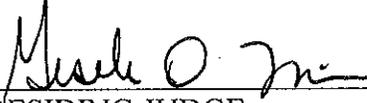
2. The document at issue, containing the information described in paragraph 1 of this judgment, is excepted from public disclosure and DADS shall withhold this document from the requestor;

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

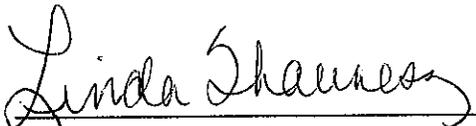
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 9th day of January, ~~2007~~ ²⁰⁰⁸.



PRESIDING JUDGE

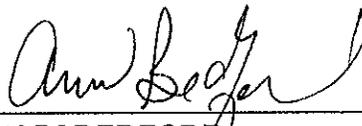
APPROVED:



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