



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 3, 2007

Ms. Cary Grace  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2007-08405

Dear Ms. Grace:

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 #282689.

The Austin Police Department (the "department") received a request for a specified police report. You claim that the marked portions of the submitted records are 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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report

Fam. Code § 261.201(a)(1). You state that the information you have marked consists of a report of alleged abuse under chapter 261 of the Family Code, as well as the identity of the person who made the report. Upon review of the submitted document, we find that section 261.201(a)(1) is applicable to the information you have marked, and the department must withhold it under section 552.101.

Section 552.101 of the Government Code also encompasses Chapter 611 of the Health and Safety Code. Chapter 611 provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health and Safety Code § 611.002. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. See Open Records Decision No. 565 (1990).

You state that the information you have marked under chapter 611 of the Health and Safety Code was created by staff in the department’s Victims Services Division (the “division”). You indicate that all division employees who interact with members of the public in response to catastrophic events have mental health backgrounds, and that these employees represent themselves as mental health professionals to those individuals who seek their services. However, the information you have marked is not a communication between a division employee and an individual seeking assistance, nor is it a record of the identity, diagnosis, evaluation, or treatment of a patient created or maintained by a professional. It is instead the documentation of a communication which is contained within a department police report. Accordingly, section 611.002 of the Health and Safety Code is not applicable to the information you have marked, and it must therefore be released to the requestor.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/jb

Ref: ID# 282689

Enc. Submitted documents

c: Ms. Sheryl Lynn Williams  
8711 Merion Circle  
Austin, Texas 78754  
(w/o enclosures)