



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2008

Ms. Shelia A. Lindsey
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-04406

Dear Ms. Lindsey:

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# 306150.

The Texas Department of Criminal Justice (the "department") received a request for information regarding a named inmate. You state you will release some information to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the department ignored its previous request for information and failed to seek this ruling in timely compliance with the Act. The requestor asserts that he sent a previous request for information, dated October 24, 2007, and that the department failed to respond to that letter. The requestor further states that he faxed the same request to the department on January 3, 2008 and that the January 3 fax resulted in the department's request for this ruling. The requestor provides us with no proof, however, of whether and/or when his letter of October 24, 2007 actually was mailed. In requesting this ruling, the department states that it received the requestor's fax on January 3, 2008. The department also states that it requested clarification of the request for information on January 7, 2008, and that the requestor responded to this clarification request on January 17, 2008. Gov't Code § 552.222 (if request for information is unclear,

governmental body may ask requestor to clarify request); Open Records Decision No. 663 (1999) (deadlines tolled while governmental body awaits clarification). Further, the department informs us that the department was closed on January 21, 2008. Thus, the department's deadline to submit its request for a ruling was January 30, 2008. The department requested this ruling by letter dated and faxed on January 29, 2008. Whether the requestor's letter dated October 24, 2007 was actually sent and received presents questions of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *Id.* Therefore, based on the department's representations and our review, we conclude that as the department requested this ruling within ten business days of the date of its receipt of the requestor's January 3, 2008 fax, the department's request for this ruling was submitted in timely compliance with section 552.301(b) of the Act. Additionally, we note that regardless of whether the department failed to meet its section 552.301 requirement, sections 552.101 and 552.134 provide compelling reasons to overcome the presumption of openness. *See* Gov't Code §§ 552.301, .302.

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 protected by other statutes. Access to medical records is governed by the Medical Practices Act (the "MPA"), chapter 159 of the Occupations Code. Some of the submitted information contains medical records governed by the MPA. Section 159.002 of the MPA provides:

(b) 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 this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code §§ 159.002(b), (c). Information subject to the MPA includes both medical records and information that was obtained from medical records. *See* Open Records Decision No. 598 (1991). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records

Decision No. 565 at 7 (1990). The department may only release the medical records we have marked in accordance with the MPA.

Section 552.134 of the Government Code, which relates to inmates and former inmates of the department, provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The remaining records consist of information about an individual confined as an inmate in a facility operated by the department. Thus, we agree that this information is subject to section 552.134. We also find that none of the information at issue is subject to release under section 552.029 of the Government Code. Therefore, the remaining information is excepted from disclosure under section 552.134 of the Government Code and must be withheld.¹

In summary, the department may only release the information we have marked in accordance with the MPA. The department must withhold the remaining information under section 552.134 of the Government Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure.

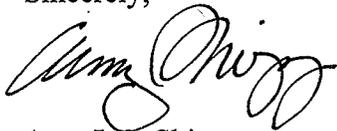
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 challenge 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 306150

Enc. Submitted documents

c: Mr. Fritz Barnett
440 Louisiana, Suite 1400
Houston, Texas 77002
(w/o enclosures)