



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2008

Mr. Brian L. Rose
Assistant District Attorney
Harris County
1201 Franklin Street, Suite 600
Houston, Texas 77002-1923

OR2008-07188

Dear Mr. Rose:

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# 311174.

The Harris County District Attorney (the "district attorney") received a request for "the medical records and psychiatric records of every juvenile who had a transfer hearing that was open to the public in which those records were admitted into evidence and/or extensively discussed with witnesses" for a specified time period.¹ You claim that the requested information may be excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

¹You inform us that the district attorney sought and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We 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 state that documents fully responsive to the request are difficult to identify due to the specific nature of the request and because the records do not indicate on their face whether they were entered into evidence or extensively discussed with witnesses. We note, however, that the administrative inconvenience of providing public records to a requestor in response to an open records request does not constitute sufficient grounds for denying such a request. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See Open Records Decision No. 561 at 8 (1990)*. In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we will consider the district attorney to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

Next, we note that the request is limited to "medical records and psychiatric records." Accordingly, any other types of information contained in the submitted documents are not responsive to the instant request. This decision does not address the public availability of the non-responsive information that you have submitted, and such information need not be released. For the submitted information that is responsive to the request, which we have marked, we will address your arguments against disclosure.

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 chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) states that "[c]ommunications 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." 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. Health & Safety Code § 611.001(b). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to mental health records only by certain individuals. *See Open Records Decision No. 565 (1990)*. Section 611.004(d) states that "[a] person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information."

You have provided this office with an affidavit from an assistant district attorney involved in the transfer hearings at issue who asserts that the submitted document "contains a psychological evaluation of the juvenile." Upon review, we find that the information at issue was taken from mental health records that are confidential under section 611.002 of the Health and Safety Code. The district attorney may only release this information in

accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

To summarize, only the "medical records and psychiatric records" contained in the submitted information are responsive to the request. The mental health records we have marked may only be released in accordance with the access provisions of sections 611.004 and 611.0045 of the Health and Safety 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).

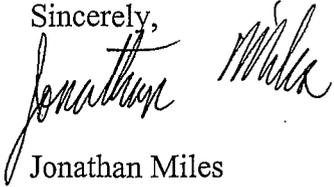
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in cursive script, appearing to read "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 311174

Enc. Submitted documents

c: Mr. Randy Schaffer
The Schaffer Firm
1301 McKinney, Suite 3100
Houston, Texas 77010
(w/o enclosures)