



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2008

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

OR2008-15894

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# 330780.

The Texas Department of Aging and Disability Services (the "department") received a request for specified categories of information pertaining to an incident involving the requestor's client. You indicate that some of the requested information has been released, but state that some of the submitted information has been "communicated" to the requestor, but 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.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 303 of the Occupations Code addresses the peer review of nurses. Section 303.006 protects all communications made to a nursing peer review committee and makes the committee proceedings confidential. Occ. Code § 303.006. Information protected by section 303.006 may be released only as provided in section 303.007. You inform us that some of the submitted information consists of materials that were reviewed by or provided to a nursing

¹We 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.

peer review committee. Based on your representations and our review, we find that the nursing peer review information is protected under section 303.006 of the Occupations Code. As the provisions of section 303.007 do not apply to the requested information, the department must withhold the nursing peer review information, which you have marked, under section 552.101 of the Government Code in conjunction with section 303.006.²

Section 552.101 also 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 some of the remaining information pertains to “state school client information” and that “[a]s the state school is itself a program for persons with mental retardation, all potentially client-identifying information ha[s] been separately marked on the [submitted] exhibits.” You also assert that the requestor has not demonstrated a right of access to the submitted records under section 595.003 or 595.004 of the Health and Safety Code. Having considered your representations and reviewed the submitted records, we agree that the department must withhold the remaining information you have marked under section 552.101 in conjunction with section 595.001.

To conclude, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 303.006 of the Occupations Code. The department must also withhold the remaining information you have marked under section 552.101 in conjunction with section 595.001 of the Health and Safety Code. The department must release the remaining information.

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). If the governmental body does not file suit over 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).

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

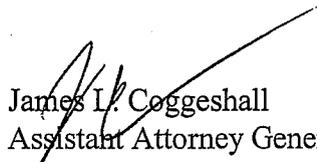
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ma

Ref: ID# 330780

Enc. Submitted documents

cc: Requestor
(w/o enclosures)