



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2009

Ms. Robin J. Chapman
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-01384

Dear Ms. Chapman:

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# 333883.

The Texas Department of State Health Services (the "department") received a request for a named individual's response to a specified complaint. You state some of the requested information has been or will be released to the requestor. You claim the remaining requested 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." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute. Section 611.002(a) of the Health and Safety Code provides 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." Health & Safety Code § 611.002(a). 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

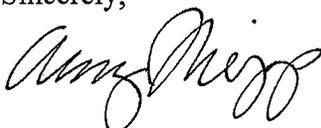
¹We note you have submitted information you have marked as not responsive to the request. Our ruling does not address this non-responsive information, and the department need not release it in response to the request.

reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Health & Safety Code §§ 611.004, .0045. You state the information you have marked consists of copies of mental health records or information from mental health records and, as such, is confidential. Upon review, we agree the information you have marked is confidential under section 611.002 of the Health and Safety Code. In this instance, the requestor, her daughter, and her daughter's spouse are the patients to whom the mental health records pertain. Thus, the requestor may have a right of access to some of the marked information. *See id.* §§ 611.004, .0045. Therefore, the department may only release the mental health records you have marked in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. As our ruling on this issue is dispositive, we do not address your remaining arguments against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_or1.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



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

ALS/jb

Ref: ID# 333883

Enc. Submitted documents

cc: Requestor
(w/o enclosures)