



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2009

Ms. M. Ann Montgomery
Assistant Ellis County & District Attorney
Ellis County & District Attorney
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2009-02205

Dear Ms. Montgomery:

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# 335328.

The Ellis County and District Attorney's Office (the "district attorney") received a request for all closed cases involving a named individual, including a specified case.¹ You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure.² We have considered your arguments and reviewed the submitted information.

Initially, we note you have only submitted information related to the specified prior offense involving the named individual. To the extent other responsive information regarding the named individual existed on the date the district attorney received this request, we assume you have released it. If you have not released this information, you must do so at this time.

¹The district attorney sought and received a clarification of the information requested. *See* Gov't Code 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

²Section 552.101 of the Government Code does not encompass discovery privileges. *See* Open Records Decision No. 647 at 2 (1996).

See Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses section 611.002 of the Health and Safety Code, which provides in part:

(a) 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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). 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. *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. Thus, the district attorney may only release the mental health records we have marked in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to a case that was dismissed, thus, concluding in a result other than conviction or deferred adjudication. Accordingly, we agree the submitted information is subject to section 552.108(a)(2). Therefore, the district attorney may withhold the information you have marked in the submitted information under section 552.108(a)(2).³

In summary, the district attorney may only release the mental health records we have marked in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The

³As our ruling is dispositive for the information you have marked, we need not address your remaining argument against disclosure.

district attorney may withhold the information you have marked under section 552.108(a)(2). The remaining information must be released to the requestor.⁴

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_orl.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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 335328

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. However, the requestor has a right of access to the individual's social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).