



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2009

Ms. Donna Moore
Director of Quality Management
Burke Center
4101 South Medford Drive
Lufkin, Texas 75901-5699

OR2009-05384

Dear Ms. Moore:

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# 340709.

The Burke Center (the "center") received a request for all records pertaining to a named individual. We understand you to claim the submitted mental health treatment records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 written comments regarding availability of requested information).

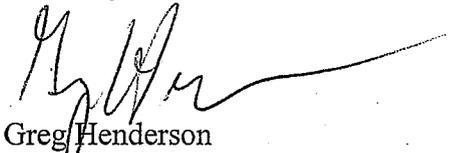
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential, such as section 611.002 of the Health and Safety Code, which 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). Sections 611.004 and 611.0045 provide for access to mental health records by only certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a person authorized to act on the patient's behalf, if the patient is deceased. Health & Safety Code

§§ 611.004(a)(5), .0045(f). Upon review, we agree the submitted records are confidential under section 611.002 of the Health and Safety Code. We note the records pertain to a deceased patient. You state the center has not received evidence the requestor is the authorized representative of the deceased patient whose records are at issue. Thus, if the center receives notification the requestor is the patient's authorized representative, it must release the submitted mental health records to the requestor pursuant to section 552.101 of the Government Code in conjunction with sections 611.004 and 611.0045 of the Health and Safety Code. If the center does not receive such notification, the submitted records must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/dls

Ref: ID# 340709

Enc. Submitted documents

c: Requestor
(w/o enclosures)