



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Mr. Sam Contreras
Reeves County Judge
Reeves County
100 East 4th Street, Suite 207
Pecos, Texas 79772

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2010-03117

Dear Mr. Contreras:

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# 371697.

Reeves County (the "county") received two requests from the same requestor for information pertaining to: (1) the county's contracts with the Bureau of Prisons from 2003 to 2009; (2) the county's Prison Monitor contracts from specified time periods; (3) the county's contracts with two named entities from 2003 through 2009; (4) specified inmate medical complaints during 2007 through 2009; and (5) specific bills and payments related to inmate medical care, dental care, and medication during 2007 through 2009. You inform us you do not have information responsive to the fifth category of requested information.¹ You state you do not object to the release of the first and second categories of requested information, and inform us you have released some information responsive to the third category of the request. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also indicate the requested information may implicate the proprietary interests of third parties subject to exception under the Act. Accordingly, you notified Physicians Network Association ("PNA") and GEO of the requests for information and of their right to submit arguments to this office as to why the requested information

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of inmate medical complaints.²

Initially, we note you have not submitted any information responsive to the third category of requested information. We assume, to the extent information responsive to this portion of the request existed when the county received the request for information, you have released it to the requestor. If not, then you must do so at this time. *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, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under

²We assume 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 those records contain substantially different types of information than that submitted to this office.

the supervision of a physician. See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Although you claim the MPA is applicable to the submitted inmate medical complaints, you have not shown how this information constitutes communications between a physician and a patient, or contains the identity, diagnosis, evaluation, or treatment of a patient by a physician for purposes of the MPA. Furthermore, we find you have not shown this information was obtained directly from a medical record. We therefore conclude the county may not withhold the submitted inmate medical complaints on the basis of the MPA.

You also raise section 552.101 in conjunction with common-law privacy for the submitted inmate medical complaints. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. See *id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing information of no legitimate public interest. Therefore, the county must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received any arguments from PNA or GEO explaining why their information should not be released. Therefore, we have no basis to conclude that PNA or GEO have a protected proprietary interest in any portion of the remaining information. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold any of the remaining information based on the proprietary interests of PNA or GEO.

In summary, the county must withhold the information we have marked in the submitted inmate medical complaints under section 552.101 of the Government Code in conjunction

with common-law privacy. As you raise no further arguments, the remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 371697

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Trey Farthing
Physicians Network Association
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(w/o enclosures)

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JUN 12 2014

At 2 PM M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GN-10-000800

REEVES COUNTY, TEXAS, a political
subdivision of the State of Texas,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY GENERAL
OF THE STATE OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT
§
§
§
§ 261st JUDICIAL DISTRICT
§
§
§
§ TRAVIS COUNTY, TEXAS

AGREED ORDER OF DISMISSAL

This cause is an action under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff Reeves County and Defendant Greg Abbott, Attorney General of Texas, agree that this matter should be dismissed pursuant to PIA section 552.327. A court may dismiss a PIA suit under section 552.327 when all the parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request or has abandoned the request. Tex. Gov't Code § 552.327. The requestor, Ms. Kim Balin of Dan Rather Reports, has abandoned her request with regard to the specific information at issue in this case. The parties request that the Court enter this Agreed Dismissal Order. The Court is of the opinion that entry of an agreed dismissal order is appropriate.

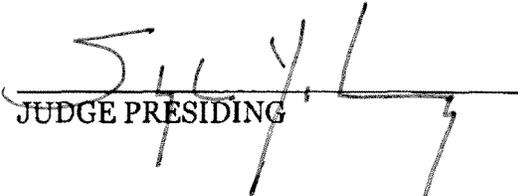
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that Plaintiff's cause of action against Defendant is dismissed in all respects;

IT IS FURTHER ORDERED that all of the information that is the subject of this suit shall be withheld from release to the requestor;

All relief not expressly granted is denied; and

This Order disposes of all claims between the parties as final.

Signed this 12th day of June, 2014.


JUDGE PRESIDING

AGREED:



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