



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2010

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

OR2010-08617

Dear Ms. Owens:

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# 382567 (DSHS File # 17186-2010).

The Texas Department of State Health Services (the "department") received a request for several categories of information pertaining to the San Antonio State Hospital and a named patient. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 576.005 of the Health and Safety Code provides that "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." Health and Safety Code § 576.005. You contend some of the submitted information consists of records of a mental health facility that directly or indirectly identify patients or former patients. Upon review, we find the confidentiality provision of section 576.005 applies to the information at issue. You do not indicate that any other state law would permit disclosure of this information in this instance. Accordingly, the department must withhold the information we have marked

under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code.¹

You raise section 552.107 of the Government Code for the remaining information. Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim the remaining information consists of communications between a department attorney, department program management staff, and a human resource specialist for the Texas Health and Human Services Commission (the “HHSC”) that were made for the purpose of facilitating the rendition of professional legal services. We understand the HHSC is the umbrella agency for the department. You explain the HHSC’s human resources specialist, department attorneys, and department program staff coordinate their efforts in the area of personnel and employment matters. *See Gov’t Code* § 531.0055(e)-(f). You further

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

state the communications were intended to be confidential and that the confidentiality of the communications has been maintained. Upon review, we find the department may withhold the remaining information pursuant to section 552.107 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. The department may withhold the remaining information under section 552.107 of the Government 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/em

Ref: ID# 382567

Enc. Submitted documents

cc: Requestor
(w/o enclosures)