



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2010

Ms. Ashley R. Allen
Staff Attorney
Administrative Law Section
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2010-09027

Dear Ms. Allen:

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# 383459.

The Texas General Land Office (the "GLO") received a request for (1) correspondence referring to allegations of abuse at a specified veterans home over a specified period of time, (2) the "Senior Dimensions, Inc. internal facility investigation" of this facility, and (3) certain reports generated by a named individual regarding two specified facilities over specified periods of time. You claim the submitted 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we note it does not appear you have submitted information responsive to items one and two of the request. To the extent information responsive to these portions of the request existed on the date the GLO received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 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).

Next, we address the requestor's assertion that the GLO failed to comply with section 552.301(d) of the Government Code, which provides as follows:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and
- (2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). The GLO received the request for information on March 31, 2010. This office does not count any holidays, including skeleton crew days observed by a governmental body, as business days for the purpose of calculating a governmental body's deadline under the Act. The GLO informs this office it observed a holiday on April 2, 2010, and a skeleton crew day on April 21, 2010; accordingly, the 10-business-day deadline to provide information pursuant to section 552.301(d) was April 15, 2010. The requestor states the GLO had not informed the requestor pursuant to section 552.301(d)(1) of its intent to seek a ruling or provided the requestor a copy of the district's request for a ruling pursuant to section 552.301(d)(2) as of April 20, 2010. *See id.* § 552.301(d)(1), (2).

The GLO's request for a ruling from this office, which shows it was copied to the requestor, is dated April 15, 2010, and was received by this office by fax on the same date. The determination of the date that the GLO sent the requestor a copy of the request for a ruling is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See Open Records Decision No. 522 at 4 (1990)*. The GLO represents that it provided the requestor a copy of the request for a ruling on April 15, 2010, the same day that it faxed the request for a ruling to this office. Thus, we conclude the GLO complied with the procedural requirements of section 552.301(d).

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 other

statutes, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(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(b), (c). Information 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 the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). The submitted information consists of quality control evaluations regarding certain facilities of the Texas Veterans Land Board. You assert these evaluations contain information subject to the MPA. Upon review, we agree portions of the information at issue, which we have marked, consists of information subject to the MPA. The GLO may only release this marked information in accordance with the MPA. You have failed to demonstrate, however, and the information at issue does not otherwise indicate, that any of the remaining information was taken directly from records created by or under the supervision of a physician. Accordingly, none of the remaining information may be withheld on the basis of the MPA.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You assert the remaining submitted information contains personal medical information subject to common-law privacy. We note, however, the information at issue pertains to individuals who are not identified. This information does

not implicate any individual's privacy interest. Furthermore, the remaining information at issue is not otherwise intimate or embarrassing and not of legitimate concern to the public. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the GLO may only release the information obtained from medical records in accordance with the release provisions of the MPA. As you raise no further exception to the disclosure of the remaining information, it 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/tp

Ref: ID# 383459

Enc. Submitted documents

c: Requestor
(w/o enclosures)