



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-12090

Dear Mr. Mu:

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# 389828.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named inmate. You indicate that some of the requested information either has been or will be released. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 exception encompasses information that other statutes make confidential. You claim section 552.101 in conjunction with the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Medical records are confidential under section 159.002 of the MPA, which provides in 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). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked a medical record that must be withheld under section 159.002(b) of the MPA, unless the department receives written consent for release of the record that complies with sections 159.004 and 159.005 of the MPA.

We note that the remaining information includes mental health records that are confidential under section 611.002 of the Health and Safety Code. This section 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 and Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, .0045; ORD 565. The mental health records we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain the records under sections 611.004 and 611.0045.

Section 552.101 of the Government Code also encompasses section 508.313 of the Government Code, which provides in part:

- (a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). You state that some of the submitted information is contained in the parole division files of the named inmate. You inform us that the marked information was generated while the inmate was subject to release on parole, release to mandatory supervision, or executive clemency or was a releasee. *See id.* § 508.313(a)(1)-(2). You do not indicate that any of the information in question is subject to release under section 508.313(c). *See id.* § 508.313(c)-(d).¹ You state that the information in question is not subject to chapter 62 of the Code of Criminal Procedure. *See id.* § 508.313(e).² Based on your representations and our review of the information in question, we conclude that section 508.313 of the Government Code is generally applicable to the information we have marked.

You also claim section 552.134 of the Government Code, which is applicable to information relating to inmates of the department. Section 552.134(a) states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Id. § 552.134(a). You state that the rest of the submitted information is related to an inmate of the department. Based on your representation and our review of the information at issue, we conclude that section 552.134 of the Government Code is generally applicable to the remaining information.

¹Section 503.313(c) provides for the release of information encompassed by section 508.313(a) to the governor, a member of the board of pardons and paroles or a parole commissioner, the criminal justice policy council, or an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose. Section 508.313(d) provides that "eligible entity" means a government agency, an organization with which the Department of Criminal Justice contracts or an organization to which the department provides a grant, or an organization to which inmates are referred for services by the department.

²Section 508.313(e) provides that section 508.313 does not apply to information relating to a sex offender that is authorized for release under chapter 62 of the Code of Criminal Procedure.

Sections 508.313 and 552.134 are explicitly made subject, however, to section 552.029 of the Government Code. *See id.* §§ 508.313(f), 552.134(a). Section 552.029 provides in part:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021 [of the Government Code]:

(1) the inmate's . . . department photograph[; and]

(8) basic information regarding . . . an alleged crime involving the inmate.

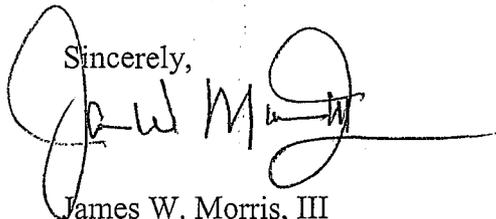
Id. § 552.029 (1), (8). In this instance, the information encompassed by sections 508.313 and 552.134 of the Government Code includes the named inmate's department photograph and information regarding alleged crimes involving the inmate. Thus, the department must release the inmate's photograph and basic information regarding the alleged crimes involving the inmate under section 552.029. Basic information includes the time and place of the incident, the names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code and section 552.134 of the Government Code.

In summary: (1) the marked medical record must be withheld under section 159.002(b) of the MPA, unless the department receives written consent for release of the record that complies with sections 159.004 and 159.005 of the MPA; (2) the marked mental health records must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain the records under sections 611.004 and 611.0045 of the Health and Safety Code; and (3) the rest of the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code and section 552.134 of the Government Code, except for the named inmate's photograph and basic information regarding the alleged crimes involving the inmate, which must be released under section 552.029 of the Government Code. As we are able to make these determinations, we need not address your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 389828

Enc: Submitted documents

c: Requestor
(w/o enclosures)