



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2010

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-16080

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#397690.

The Texas Department of Criminal Justice (the "department") received a request for five categories of information pertaining to a named former inmate. 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 submitted information.

You claim the submitted information is excepted under section 508.313 of the Government Code. 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 section 508.313 of the Government Code, which provides in part:

- (a) All information obtained and maintained [by the department], 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.

...

(c) The department, on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board or a parole commissioner;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

...

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

Id. § 508.313(a), (c), (e), (f); *see id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). You state that the submitted information is contained in the parole division files of the named former inmate. You explain that the submitted information was generated while this individual was subject to release on parole or while a releasee. *Id.* § 508.313(a)(1). 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). Likewise, you do not indicate that any of the submitted information is subject to chapter 62 of the Code of Criminal Procedure. *See id.* § 508.313(e). In addition you state that the submitted information is not made public under section 552.029 of the Government Code. *See id.*

§ 508.313(f). Based on your representations and our review, we find the submitted information is generally subject to section 508.313 of the Government Code.

We note the submitted information contains medical records subject to the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which makes medical records confidential. *See* Occ. Code § 159.001. Section 159.002 of the MPA provides in part:

(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.

Id. § 159.002(a)-(c). This office has concluded that 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). In addition, because hospital treatment is routinely conducted under the supervision of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records. *See* Open Decision Nos. 598 (1991), 546 (1990). We note that as the former inmate whose medical records are at issue, the requestor may have a right of access to the submitted information under the MPA. *See* Occ. Code § 159.005(a)(2).

Section 552.101 also encompasses section 611.002(a) of the Health and Safety Code, which provides "[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). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These

sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Sections 611.004 and 611.0045 permit disclosure of mental health records to a patient or a person who has the written consent of the patient. *Id.* §§ 611.004, .0045. Upon review, we find portions of the information at issue consist of mental health records pertaining to the requestor. As such, the requestor may have a right of access to the submitted information under chapter 611. *See* Occ. Code § 159.005(a)(2).

Because portions of the submitted information consist of medical records subject to the MPA and mental health records subject to chapter 611 of the Health and Safety Code, these records are generally confidential and may only be released as provided under the MPA and chapter 611 of the Health and Safety Code. *See* ORD 598. However, because the submitted information also falls under section 508.313 of the Government Code, and because the access provisions of the MPA and chapter 611 conflict with the confidentiality provision in section 508.313, we must determine which statutes governs access to these records.

Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 508.313 of the Government Code generally applies to any type of record obtained and maintained by the department that is related to an inmate subject to release on parole, release to mandatory supervision, or executive clemency. However, the MPA is more specific because it is only applicable to medical records. Additionally, the MPA was enacted after the statutory predecessor to section 508.313 of the Government Code.¹ *See* Gov't Code § 311.026, *Avery v. State*, 963 S.W.2d 550 (Tex.App.—Houston [1st Dist.] 1997, no pet.) (specific statute prevailed over general statute based on specific nature of statutory authority and fact that specific statute was originally enacted later in time than general statute). In addition, chapter 611 of the Health & Safety Code is more specific because it is only applicable to mental health records. Accordingly, we conclude that, notwithstanding the applicability of section 508.313 of the Government Code, portions of the submitted information, which we have marked, are subject to the MPA and chapter 611 of the Health and Safety Code and may only be released in accordance with these provisions. *See* ORD 598. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

In summary, the department must only release the submitted medical records we have marked in accordance with the MPA. The department must only release the submitted

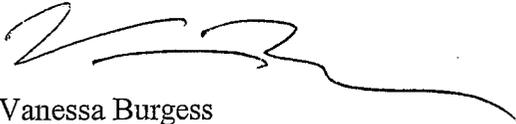
¹*See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 31 (enacting MPA), Act of June 21, 1947, 50th Leg., R.S., ch. 452, § 29, 1947 Tex. Gen. Laws 1049, 1057 (enacting statutory predecessor to Gov't Code § 508.313).

mental health records we have marked in accordance with chapter 611 of the Health and Safety Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.²

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 397690

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining argument against disclosure.