



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2011

Ms. Charlotte A. Towe  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2011-14154

Dear Ms. Towe:

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# 431552.

The Texas Department of Criminal Justice (the "department") received a request for a named individual's criminal records or Pen Packet. You state some of the responsive information has been or will be released. You claim the remaining responsive information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a medical record. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information that other statutes make confidential, such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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(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). Upon review, we find the medical record we have marked is subject to the MPA. We note, however, the requestor may have a right of access to this record as the authorized representative of the inmate whose information is at issue. Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. 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 note the MPA prevails over the more general provisions of the Act in governing access to a specific subset of information. *See* ORD 598. Accordingly, the medical record we marked must be withheld under the MPA, unless the department receives written consent for release of this information that complies with sections 159.004 and 159.005 of the MPA.

We next note the submitted information also includes mental health records. Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which 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 & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining "patient" and "professional"). 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). Upon review, we find the mental health records we have marked are subject to section 611.002. As previously noted, the requestor is the authorized representative of the inmate whose mental health records are at issue and, thus, may have a right of access to this information. Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* ORD 565. 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. Health & Safety Code §§ 611.004, .0045. We note access to mental health records is governed by the provisions of sections 611.004 and 611.0045, rather than the Act. Open Records Decision Nos. 598, 451 at 4 (1986). Accordingly, the mental health records we marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

We now address your claim under section 552.134 of the Government Code for the remaining information. This section relates to inmates and former inmates of the department, and provides in relevant part:

(a) Except 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.

Gov't Code § 552.134(a). You assert the remaining information pertains to an individual who was confined as an inmate in a facility operated by the department. Upon review, we agree section 552.134 is applicable to this information. We find the exceptions in section 552.029 are not applicable in this instance. *See id.* § 552.029. As noted above, the requestor is the authorized representative of the inmate at issue. Section 552.023 of the Government Code gives a person or that person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See id.* § 552.023(a). Section 552.134, however, does not protect only the former inmate's privacy interests, but also protects the interests of the governmental body. As such, the requestor does not have a right of access to the remaining information under section 552.023. *See id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person's privacy interests to withhold information to which requestor may otherwise have a special right of access). Therefore, the department must withhold the remaining information under section 552.134.

In summary, the medical record we marked must be withheld under the MPA, unless the department receives written consent for release of this information that complies with sections 159.004 and 159.005 of the MPA. The mental health records we marked may only

be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The department must withhold the remaining information under section 552.134 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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 431552

Enc. Submitted documents

c: Requestor  
(w/o enclosures)