



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2011

Ms. Patricia Fleming
Assistant General Counsel
TDCJ-Office of the General Council
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-15288

Dear Ms. Fleming:

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# 435217.

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to the parole release of a named inmate. You state the department has released or will release some of the requested information, but 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(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). 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. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portion of the submitted information that constitutes medical records and that the department may only release in accordance with the MPA.¹

Section 552.101 of the Government Code also encompasses section 508.313 of the Government Code. Section 508.313(a) provides the following:

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). However, section 508.313 is explicitly made subject to section 552.029 of the Government Code, which provides in relevant part the following:

Notwithstanding Section 508.313 . . . , the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate[.]

Id. § 552.029(1); *see id.* § 508.313(f). You state the remaining information "is held by the Parole Division of [the department] as a part of the information about [the named individual] who has been released from prison on mandatory supervision or parole." *See id.*

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

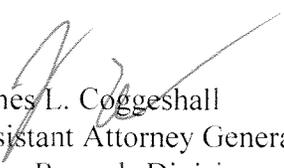
§ 508.001(5)-(6) (defining “mandatory supervision” and “parole”). The requestor is not authorized to obtain the information in question under section 508.313(c). *See id.* § 508.313(c)-(d). The remaining documents contain information that concerns the general state of health or the nature of an injury to or critical illness suffered by the releasee. Thus, the department must release from the remaining documents basic information concerning the releasee’s general state of health and the nature of an injury or critical illness suffered by the releasee pursuant to section 552.029(1). 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.

To conclude, the department may only release the marked medical records in accordance with the MPA. The department must release from the remaining documents basic information concerning the releasee’s general state of health and the nature of an injury or critical illness suffered by the releasee pursuant to section 552.029(1) of the Government 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 435217

Enc. Submitted documents

c: Requestor
(w/o enclosures)