ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2013

Ms. Myrna S. Reingold
County of Galveston
722 Moody 5th Floor
Galveston, Texas 77550-2317

OR2013-00779

Dear Ms. Reingold:

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# 475976.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for all documents associated with a specified incident involving the requestor. You state you provided some information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

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 chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002 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 and 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). The requested information consists of a Mental Health Division Intake Report created by a Mental Health Deputy. You state a Mental Health Deputy, who is also a peace officer employed within the sheriff's office's Mental Health Division, has been certified as a Mental Health Deputy by the Texas

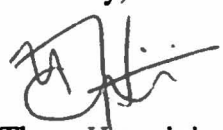
[1]While you raise section 552.101 in conjunction with Texas Rule of Evidence 508 for your informer's privilege argument, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Commission on Law Enforcement Officer Standards and Education in accordance with state law requirements. You state the certification includes passing an examination which tests the officer's "knowledge and recognition of the characteristics and symptoms of mental illness, mental retardation, and mental disabilities, and knowledge of mental health crisis intervention strategies for people with mental impairments[.]" Further, you state a Mental Health Deputy "performs initial *evaluations* of mental or emotional conditions for purposes of determining whether an individual poses a substantial risk of harm to themselves or to others." Based on your representations, and our review of the information at issue, we find the Mental Health Deputy who created the intake report to be a professional for purposes of chapter 611of the Health and Safety Code because the deputy is certified by the state to diagnose, evaluate, or treat mental or emotional conditions or disorders. *See id.* Therefore, we conclude the information at issue consists of a record of the identity, diagnosis, evaluation, or treatment of a patient that is created or maintained by a professional that is confidential under section 611.002 of the Health and Safety Code, and must be withheld under section 552.101 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

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[2]We note our ruling is dispositive and we need not address your remaining arguments against disclosure of this information. We also note this ruling does not affect a patient's right to access his or her mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Health & Safety Code §§ 611.004, .0045; *cf. Abbott v. Tex. State Bd. of Pharmacy*, No. 03-11-00481-CV, 2012 WL 5974080 (Tex. App.—Austin Nov. 21, 2012, no pet.) (Medical Practice Act, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

Ref: ID# 475976

Enc. Submitted documents

c: Requestor
(w/o enclosures)