



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2018

Mr. Eric K. Miller
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2018-01809

Dear Mr. Miller:

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# 692874 (TDCJ# AL0098).

The Texas Department of Criminal Justice (the "department") received a request for 16 categories of information pertaining to certain detainees during a specified time period. You state you will release some information to the requestor. You claim some of 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 contend the information you marked is confidential under section 290dd-2 of title 42 of the United States 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. This exception encompasses information that other statutes make confidential. Section 290dd-2 of title 42 of the United States Code provides in part:

- (a) Requirement. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention,

training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a); *see* 42 C.F.R. §§ 2.1 (records of identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of United States are generally confidential), 2.12(b) (discussing when an alcohol abuse or drug program is considered to be federally assisted). Section 290dd-2 makes confidential the records of substance abuse patients that are created and maintained as part of their participation and treatment in a federally assisted substance abuse program. *See* 42 U.S.C. § 290dd-2(a). You inform us the department operates a federally funded substance abuse treatment program. Based on your representations and our review, we find the information at issue consists of records of the identity, diagnosis, prognosis, or treatment of a patient maintained in connection with the performance of a program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. Accordingly, the department must withhold the substance abuse information you marked under section 552.101 of the Government Code in conjunction with section 290dd-2 of title 42 of the United States Code.

Section 552.134(a) of the Government Code relates to 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 state the information you marked constitutes information about inmates confined in a facility operated by the department. You state section 552.029 of the Government Code does not apply to the information at issue. Upon review, we find the information you marked is subject to section 552.134 of the Government Code and must be withheld on this basis.¹

In summary, the department must withhold the substance abuse information you marked under section 552.101 of the Government Code in conjunction with section 290dd-2 of title 42 of the United States Code. The department must withhold the information you marked

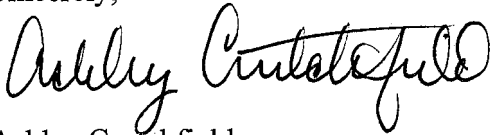
¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

under section 552.134 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Ashley Crutchfield". The signature is written in a cursive style with a large, stylized initial "A".

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 692874

Enc. Submitted documents

c: Requestor
(w/o enclosures)