



February 17, 2000

Mr. Terrell I. Murphy  
Executive Director  
Texas Commission for the Blind  
P.O. Box 12866  
Austin, Texas 78711

OR2000-0599

Dear Mr. Murphy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132444.

The Texas Commission for the Blind (the "commission") received a request for a directory of all individuals who have requested or received services from the commission in Bexar County. You have interpreted the request for a "directory" to mean a request for names and addresses of the individuals. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You did not, however, submit to this office copies or representative samples of the specific information that was requested.<sup>1</sup>

---

<sup>1</sup>In your letter brief, you state "We are not attaching any documents containing names at this time. We could produce a list of names from our database if names were ruled public, but they are not discreet documents at this time."

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You assert that the names and addresses of individuals who have received commission services are confidential by law. Thus, you have presented compelling reasons to overcome the presumption of openness.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 91.059 of the Human Resources Code provides as follows:

Except for purposes directly connected with the administration of the vocational rehabilitation program and according to commission rules, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of his or her official duties.

Further, a commission rule provides for the confidentiality of applicant and consumer information. 40 T.A.C. § 163.85. Title 40, section 163.85 of the Texas Administrative Code provides in pertinent part:

All applicant and consumer personal information furnished to and gathered by the Commission in the administration of this chapter, including names, addresses, records of agency evaluations, reports of medical examinations and treatments, financial information, and photographs, shall be held confidential in accordance with these rules, 34 Code of Federal Regulations §361.38 (concerning the protection, use, and release of personal information), Texas Human Resources Code, Title 5, §91.059 (concerning the misuse of information), and state laws concerning the abuse or neglect of children, elderly persons, and disabled persons.

Thus, we find that the names and addresses of all individuals who have either requested or received services from the commission are confidential under section 163.85 of the Texas

Administrative Code and section 91.059 of the Human Resources Code.<sup>2</sup> *But see* Open Records Decision No. 527 (1989) (generally governmental body may not withhold information under section 552.101 pursuant to administrative rule). Therefore, the commission must withhold the requested information from disclosure under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

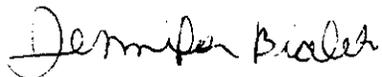
If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

---

<sup>2</sup>We note that section 163.86 of the Administrative Code provides conditions for the release of personal information. It does not appear that the conditions apply to this request.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/ch

Ref: ID# 132444

cc: Mr. Ken Gage  
Alamo Council of the Blind  
11206 Mystery Drive  
San Antonio, Texas 78216