



March 3, 2000

Mr. O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
510 S. Congress Avenue, Suite 206
Austin, Texas 78704-1716

OR2000-0852

Dear Mr. Robbins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132661.

The Texas Funeral Service Commission (the "commission") received a request for various records regarding the commission's investigation into complaints against several funeral homes and your personnel information as Executive Director of the commission. You state that you have provided some of the requested information to the requestor. However, you claim that the documents you have submitted to this office for review are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 651.203(b) of the Occupations Code. You also argue that certain information regarding one funeral home, in particular, is protected from disclosure under section 552.111, or, in the alternative, the information is not subject to the Public Information Act. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Therefore, section 552.101 encompasses confidentiality provisions. You raise the amendment of section 6D of V.T.C.S.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

article 4582b. *See* Act of May 24, 1999, 76th Leg., R.S., ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064. The Seventy-sixth Legislature, without reference to the repeal and codification of V.T.C.S. article 4582b, amended section 6D of article 4582b, V.T.C.S., relating to the disclosure of investigation files compiled by the commission in regard to complaints it receives and investigates. Act of May 24, 1999, 76th Leg., R.S. ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064. Although the Seventy-sixth Legislature repealed and codified article 4582b as part of the Occupations Code, the legislature did not intend a substantive change of the law but merely a re-codification of existing law. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 6D of article 4582b, V.T.C.S., is the existing law regarding the availability of information contained in the commission's investigation files, and may be found following section 651.202 of the Occupations Code. *See also* Act of May 24, 1999, 76th Leg., R.S., ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064.

The amended statute states in relevant part:

(a) The commission shall investigate each complaint received by the commission relating to the funeral director, embalmer, apprentice, or funeral establishment. The commission shall keep an information file about each complaint filed with the commission that the commission has authority to resolve.

...

(d) The information file is public information, except for information relating to a complaint that has not reached a final disposition.

Act of May 24, 1999, 76th Leg., R.S., ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064. Under this provision, the records in which there has been a final disposition of the complaint are public.

The documents you have submitted pertaining to complaint file numbers 95-039 against Taft Harris Funeral Home, 98-039 against Hampton Vaughan, and 99-140 against Sunset Northwest Funeral Home indicate that all three investigations regarding the complaints have resulted in a final disposition of the complaint. The submitted documents are therefore public information and must be released.

You argue that the commission memoranda, e-mail and correspondence concerning the complaint file number 99-122 against Bill Clair Family Mortuary are protected from disclosure under section 552.111. In the alternative, you assert that this information is not

subject to the Public Information Act. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. However, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Furthermore, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). The documents do not reflect advice, recommendations, and opinions regarding the policymaking processes of the commission. Therefore, you may not withhold the documents at issue under section 552.111.

Also included in the documents regarding the complaint against the Bill Clair Family Mortuary, is a letter from the commission to the funeral home in which the commission relates its disposition of its investigation. In that letter, which shows a certified mail receipt date of December 17, 1999, the commission informed the funeral home: "You are reminded that failure to respond by either requesting a hearing or by paying the penalties assessed with thirty (30) days of this notice will result in a waiver of your right to a hearing and the automatic suspension of your license for six (6) months." There is no indication in the submitted documents that the funeral home submitted a written request for a hearing. Accordingly, as the thirty-day period has expired, it appears that there has been a final disposition of this matter, and that the submitted documents are therefore public information and must be released. *See* Act of May 24, 1999, 76th Leg., R.S., ch. 1476, § 22, 1999 Tex. Sess. Laws 5053, 5064. If however there has not yet been a final disposition regarding the complaint filed against the Bill Clair Family Mortuary, then the submitted documents are confidential and must be withheld until a final disposition is rendered. *See id.*

Finally, there is no indication that there has been a final disposition in the documents you have submitted relating to complaint file number 98-100 against Hampton Vaughan. If there has not yet been a final disposition regarding complaint file number 98-100, then the submitted documents are confidential and must be withheld until a final disposition is rendered.

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.

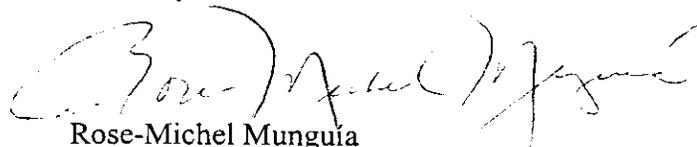
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM\ch

Ref: ID# 132661

Encl: Submitted documents

cc: Mr. Robert Bryce
The Austin Chronicle
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(w/o enclosures)