



April 7, 2000

Mr. John P. Maline
Executive Council of Physical Therapy & Occupational Therapy Examiners
333 Guadalupe, Suite 2-510
Austin, Texas 78701-3942

OR2000-1381

Dear Mr. Maline:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133906.

The Executive Council of Physical Therapy and Occupational Therapy Examiners (the "council") received two requests for information relating to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You have not submitted for our review any information that is responsive to the request. Instead, you have submitted a copy of a temporary restraining order which in your opinion prohibits the council from releasing the requested information.

Section 552.301 of the Government Code provides in relevant part that a governmental body that receives a request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions from required public disclosure under chapter 552 of the Government Code "must . . . not later than the 15th business day after the date of receiving the written request . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Gov't Code § 552.301(e)(1)(D). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. As you have not

submitted to this office any responsive information that the council seeks to withhold, the requested information is presumed to be subject to required public disclosure under section 552.302. Furthermore, in the absence of any opportunity to review the requested information, this office is unable to determine whether there is any compelling reason to withhold it from public disclosure. Therefore, section 552.302 requires that the requested information be released. We caution the council that section 552.352 of the Government Code makes the release of confidential information a criminal offense.

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).

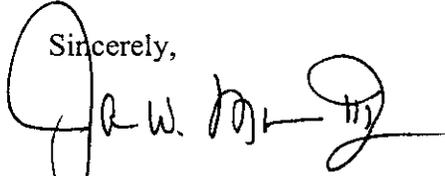
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 133906

cc: Mr. Richard Pace Via Facsimile: (281) 556-8163

Mr. Paul T. Raudenbush
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