



April 18, 2000

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

OR2000-1539

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# 134681.

The Texas Funeral Service Commission (the "commission") received a request for copies of all audio tapes and minutes from the commission's November 30, 1999 hearing, items 1 and 2 of the request, and audio tapes from the commission's January 26, 2000 hearing, item 3 of the request, and all complaints filed with the commission from January 1998 through February 21, 2000, item 4 of the request. 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 and reviewed the submitted representative samples.¹

First, we note that you submitted representative samples of only the information relating to item 4 of the request. Pursuant to section 552.301(e)(1)(D) the governmental body that requests an attorney general decision under section 552.301(a) must submit a copy of the specific information requested or a representative sample if a voluminous amount of information is requested in order to determine whether the information may be withheld from public disclosure. Thus, as the commission did not submit information pertaining to the requests for items, 1, 2, and 3, this office has no basis for determining the confidentiality of this particular information. Therefore, this office assumes that these particular items have been released to the requestor. *See* Act of May 24, 1999, 76 th Leg.,

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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

R.S., ch.1476, § 10, 1999 Tex. Sess. Law Serv. 5055, 5056. (repealing and codifying article 4582b V.T.C.S. in Occupations Code § 651.204, and amending subsection K to state that all meetings of the commission shall be open and public).

Next, we address your assertion that section 552.101 of the Government Code excepts item 4 of the request from public disclosure. 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 such as that following section 651.202 of the Occupations Code. 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. Act of May 24, 1999, 76th Leg., R.S., ch. 1476, § 22, 1999 Tex. Sess. Law Serv. 5053, 5064. Furthermore, 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. Law Serv. 5053, 5064. 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 Serv. 5053, 5064. The amendment became effective September 1, 1999. *See* Act of May 24, 1999, 76th Leg., R.S., ch.1476, § 30, 1999 Tex. Sess. Law Serv. 5053, 5056. Therefore, the amendment applies to all complaints the commission has, and not just to complaints filed with the commission on or after September 1, 1999.

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. Law Serv. 5053, 5064. Under this provision, the records in which there has been a final disposition of the complaint are public. Based on your assertion and our review of the representative samples, it appears that the investigations into these complaints are still pending. Therefore, we find that these documents are confidential and must be withheld until final dispositions of the investigations are rendered. *See* Act of May 24, 1999, 76th Leg., R.S., ch. 1476, § 22, 1999 Tex. Sess. Law Serv. 5053, 5064.

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.

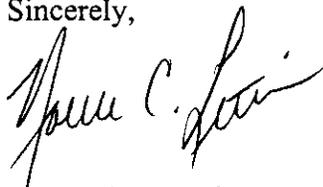
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 "Noelle C. Letteri". The signature is fluid and cursive, with the first name "Noelle" being the most prominent part.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 134681

Encl. Submitted documents

cc: Mr. Gaylord Armstrong
McGinnis, Lochridge & Kilgore
1300 Capitol Center
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Austin, Texas 78701
(w/o enclosures)