



August 16, 2000

Mr. William T. Buida
Supervising Attorney
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2000-3122

Dear Mr. Buida:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138130.

The Department of Human Services (the "department") received a request for information concerning three specified complaints. You claim that responsive information is excepted from disclosure under section 552.101 of the Government Code in conjunction with several statutes. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. You assert that a portion of the submitted information is made confidential by section 142.009(d) of the Health and Safety Code. Section 142.009(d) provides the following:

The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;

(3) with the consent of each person identified in the information released;

(4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirements; or

(7) as provided by Section 142.0092.

We consider the submitted materials to be "reports, records, and working papers used or developed" in the subject investigations as contemplated by section 142.009(d) of the Health and Safety Code. Section 142.0092 applies to categorized records of complaints and the release of that information to the public. The submitted information does not appear to fall within this statute. Further, we assume that there has been no consent for release of this information by the persons identified. This information must, therefore, be withheld except as provided below.

The submitted records include HCFA 2567 forms. Federal regulations require the department to release the HCFA 2567 forms, which contain a statement of deficiencies and plan of correction, provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 at 5 (1988); *see also* Health & Safety Code § 142.009(d)(6). If the provider has had a reasonable opportunity to review each report it must be released, with the proper redactions. You must withhold the identities of the provider's representatives on the

HCFA 2567 forms. The remainder of these forms must be released if the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments.

The submitted information also includes a form titled "Statement of Deficiencies and Plan of Correction." This form is apparently developed by the department and identifies deficiencies found. This form must be released with information that identifies any person, other than the home and community support services agency, redacted, as provided under section 142.009(d)(5) of the Health and Safety 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 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 "Michael Jay Burns". The signature is fluid and cursive, with a checkmark at the end.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138130

Encl Submitted documents

cc: Mr. Quentin D. Price
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P.O. Box 488
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(w/o enclosures)