



August 21, 2000

Mr. George D. Cato
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-3199

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138178.

The Texas Department of Health (the "department") received a written request for, among other things, any "documents or evidence" submitted to the department by a complainant in connection with two pending complaints against a named professional counselor and marriage/family therapist. You contend that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information made confidential by statutes outside the Public Information Act. Investigations of complaints involving licensed professional counselors are governed by former article 4512g, V.T.C.S., recently repealed and codified at chapter 503 of the Occupations Code. Although the Seventy-sixth Legislature repealed and codified article 4512g as part of the Occupations Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 1, 1995 Tex. Gen. Laws 1436. Furthermore, the Seventy-sixth Legislature, without reference to the repeal and codification of V.T.C.S. article 4512g, added section 16D of article 4512g, V.T.C.S., relating to, *inter alia*, the disclosure of information pertaining to the investigations of complaints regarding licensed professional counselors. Act of March 30, 1999, 76th Leg., R.S., ch. 1444, § 5, 1995 Tex. Gen. Laws 4899, 4902. 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

4512g, V.T.C.S. is the existing law regarding the availability of information pertaining to the department's investigations of licensed professional counselors.

Section 16D(h) provides as follows:

All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under [the Public Information Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) professional counselor licensing or disciplinary boards in other jurisdictions;
- (3) Peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

You have submitted to this office as responsive to the request various records provided to the department by the complainant in connection with her pending complaint against the licensed professional counselor. Section 16D does not provide for the release of these records to the requestor, who is an attorney acting on behalf of the licensed professional counselor who is currently under investigation. We conclude, therefore, that the department must withhold the information at issue in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 16D of article 4512g, V.T.C.S.¹

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

¹Because we resolve your request under section 552.101 of the Government Code, we need not address the applicability of the other exceptions to disclosure you raised.

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/RWP/ljp

Ref: ID# 138178

Encl. Submitted documents

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(w/o enclosures)