Office of the Attorney General · State of Texas
JOHN CORNYN

October 5, 2000

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

OR2000-3830

Dear Mr. Buida:

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# 139794.

The Texas Department of Human Services (the "department") states that it received a request for information concerning Cooper Home Health, Inc. You claim that the information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1]

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Gov't Code § 552.301(e). You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Exception from disclosure under section 552.101 is such a compelling interest.

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[1]The department also requests authorization from this office to rely on Open Records Decision Nos. 507 (1988) and 603 (1992) as a "previous determination" regarding the confidentiality of home health investigation records under chapter 142 of the Health and Safety Code. We decline to issue such a determination at this time.

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 other statutes. You assert that the documents at issue are excepted from disclosure under section 142.009(d) of the Health and Safety Code, in conjunction with section 552.101 of the Government Code. The department indicates that the records submitted are reports, records, and working papers that were used or developed during an investigation made under section 142.009. Based upon our understanding that there has been no consent for release and that no other exception to disclosure is applicable, we agree that the documents in question are confidential in their entirety under section 142.009(d). As such, the department must withhold the submitted information. Since we resolve your request under section 142.009(d), we do not address your other arguments.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 139794

Encl: Submitted documents

cc: Mr. William A. (Al) Teter
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(w/o enclosures)