



December 6, 2000

Ms. Karmen Binka  
Assistant City Attorney  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966

OR2000-4605

Dear Ms. Binka:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141862.

The City of San Antonio (the "city") received a request for all information related to the initiative to fluoridate the city drinking water, the subject matter list that categorizes all of the records pertinent to the study of whether to fluoridate, and a list containing each medical or dental paper adverse to fluoridation which was considered in the study. You indicate that you will provide the requestor all responsive information which the city possesses, except the dental records of individual patients.<sup>1</sup> You claim that the requested dental records are confidential under section 159.002 of the Occupations Code. You have submitted a representative sample of the responsive information to this office for review.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

The Medical Practice Act (the "MPA"), found at Subtitle B of Title 3 of the Occupations Code, governs records of the treatment of a patient by a physician. Section 159.002(b) states:

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<sup>1</sup>We note that you have informed the requestor that no subject matter list that categorizes all of the records pertinent to the study of whether to fluoridate exists. We agree that the city is not required to create information not in existence in response to a request for information. Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990), 534 (1989).

<sup>2</sup>We 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 Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

The documents submitted to this office appear to consist of dental records that were not created or maintained by a physician, as defined by the MPA. See Occ. Code § 151.002(a)(12) (“physician” means a person licensed to practice medicine in this state). Therefore, none of the submitted information may be withheld pursuant to section 159.002. The city must release the records to the requestor.

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).

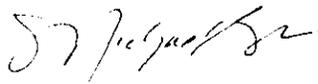
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 141862

Encl: Submitted documents

cc: Mr. Earle Cobb, Jr.  
101 Stumberg at South Flores St.  
San Antonio, Texas 78204  
(w/o enclosures)