



December 14, 2000

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2000-4708

Dear Mr. Aragón:

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# 142178.

The Texas Health and Human Services Commission (the "commission") received a request for all policy manuals, procedural manuals, standards, training manuals, memoranda, pamphlets, brochures, and guidelines created and used by the commission in investigating Medicaid fraud, as well as all cause or case numbers for "Qui Tam Cases filed against Dentists and all cause numbers for prosecutions against Texas Dentists for fraudulently billing Medicaid." You state that you do not have any information responsive to the request for cause and case numbers. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986) at 3. With respect to the remaining requested information, you claim that the information is excepted from disclosure under section 552.108(a)(1) and (b)(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 excepts from public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution ... if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution

Section 552.108 applies only to records that can be characterized as the records of law enforcement agencies or prosecutors. Thus, section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. See Open Records Decision Nos. 493 (1988), 287 (1981). You contend that the Medicaid Program Integrity Division of the commission's Office of Investigations and Enforcement ("MPI") is a law enforcement agency for the purpose of section 552.108. However, we believe MPI is not a law enforcement agency for purposes of section 552.108 because it investigates both civil and criminal violations of the law and refers criminal violations to the Attorney General for criminal enforcement.

Nevertheless, this office has held that records of criminal investigations conducted by governmental agencies may be withheld from disclosure under limited circumstances. For example, records that otherwise qualify for the section 552.108 exception, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. Open Records Decision No. 272 at 1-2 (1981). Similarly, in construing the statutory predecessor to section 552.108, this office concluded that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or has already reported to the appropriate law enforcement agency, then section 552.108 will apply to the information gathered by the administrative agency if its release would unduly interfere with law enforcement. Open Records Decision No. 493 at 2 (1988) (construing predecessor statute). You have not demonstrated that any of these exceptional circumstances apply here. Furthermore, even in the circumstance that the commission's investigations result in criminal enforcement by the Attorney General, we cannot say that release of MPI's policies and procedures would interfere with the Attorney General's law enforcement or prosecution efforts. See Open Records Decision No. 531 (1989) (release of *detailed law enforcement techniques* on the use of force would interfere with law enforcement). Therefore, we find that you have failed to show that section 552.108 excepts from public disclosure the commission's policies and procedures used in investigating Medicaid fraud. Consequently, you must release this information.

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).

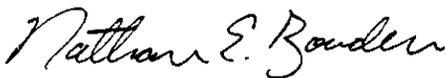
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB\er

Ref: ID# 142178

Encl: Submitted documents

cc: Mr. Carlos H. Cisneros
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(w/o enclosures)