

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



December 28, 2000

Mr. William S. Helfand
Magenheim, Bateman & Helfand
3600 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2000-4856

Dear Mr. Helfand:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142727.

The Daybreak/Life Resource CMHC ("Daybreak") received a request for a copy of any and all of Daybreak's insurance policies for specific years. You assert that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We find that the information at issue is subject to section 552.022(a)(3) of the Government Code, which states that unless expressly confidential under other law, "information in [a] . . . contract relating to the receipt or expenditure of public or other funds by a governmental body" is not excepted from required public disclosure. Notwithstanding its applicability to the information at issue, we note that section 552.103 is a discretionary exception under the Act and does not constitute other law that makes information expressly confidential.¹ Therefore, the information is not excepted from disclosure by section 552.103.

We also understand you to assert that, pursuant to the decision of the Texas Supreme Court in *In re Sabine Valley*, 986 S.W.2d 612 (Tex 1999), the information is nevertheless excepted from disclosure as information made expressly confidential under other law, specifically

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

section 101.104 of the Civil Practice and Remedies Code. The court in *In re Sabine Valley* construed section 101.104, which provides as follows:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under this chapter.
- (b) Neither the existence nor the amount of the insurance is subject to discovery.

The court held that section 101.104 prohibits the discovery and admission of insurance information in litigation against a governmental unit and against its employees for which it can be directly or vicariously liable under the Texas Tort Claims Act. *In re Sabine Valley*, 986 S.W.2d at 614 (Tex 1999). The court did not state, however, that the information is made confidential by section 101.104. We do not believe that section 101.104 constitutes other law that makes the information expressly confidential for purposes of the Act. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 “are not relevant to the availability of the information to the public”). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Gov’t Code §§ 552.005 (chapter 552 does not affect the scope of civil discovery), .006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552); Attorney General Opinion JM-1048 (1989); *see* Open Records Decision No. 575 (1990) *overruled in part by* Open Records Decision No. 647 (1996) (section 552.101 of the Act does not encompass discovery privileges). Accordingly, we conclude pursuant to section 552.022 of the Act that the information responsive to the request is subject to release 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

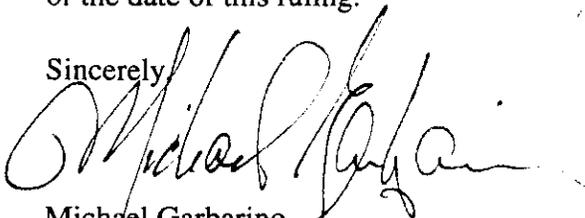
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 Garbarino
Assistant Attorney General
Open Records Division

MG/AEC/seg

Ref: ID# 142727

Encl: Submitted documents

cc: Mr. Mitchell A. Toups
Weller, Green, Toups & Terrell, L.L.P.
P.O. Box 350
Beaumont, Texas 77704
(w/o enclosures)

Cause No. GN100052

SPINDLETOP MHMR SERVICES
and SUE WALDEN as Officer
of Public Information

V.

JOHN W. CORNYN
TEXAS ATTORNEY GENERAL

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IN THE DISTRICT COURT OF

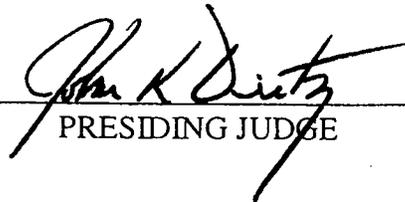
TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

IT IS ORDERED that Spindletop MHMR Services' Motion for Summary Judgment is GRANTED. This Court orders that the information requested by Mr. Toups is protected from disclosure under the Public Information Act and is not required to be released under the Texas Government Code.

Signed this 1ST day of May, 2001, ~~2000.~~



PRESIDING JUDGE