



January 12, 2001

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-0135

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143193.

The Texas Department of Criminal Justice (the "department") received a request for department Administrative Directives 06.08 (Offender Co-Payment for Health Services) and 03.92 (Attorney/Offender Telephone Calls), as well as information regarding the accreditation process and certification documents for the Estelle Unit medical department. You claim 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.

Initially, we note that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 now states in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108 . . . ." Gov't Code § 552.022(a)(1). Another category is "a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency[.]" Gov't Code § 552.022(a)(10).

Upon review of the submitted information, we conclude that the administrative directives pertaining to attorney/inmate telephone calls and offender co-payment for health services are made public by section 552.022(a)(10) of the Government Code. We also conclude that the submitted "Accreditation Report On The Health Care Services At Estelle Unit" is made public by section 552.022(a)(1) of the Government Code. Therefore, as prescribed by section 552.022, the submitted information must be released to the requestor unless it is confidential under other law.

You argue that the requested information is excepted from disclosure under section 552.103. Sections 552.103 is a discretionary exception and not "other law" for purposes of section 552.022.<sup>1</sup> Moreover, we know of no other law that would make the submitted information confidential. Accordingly, the department must release the requested information under sections 552.022(a)(1) and 552.022(a)(10) of the Government Code.

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

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<sup>1</sup>Discretionary 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). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

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 A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 143193

Encl. Submitted documents

cc: Ms. Yolanda Torres  
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(w/o enclosures)