



September 13, 2001

Mr. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-4077

Dear Mr. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151929.

The Travis County Health Facilities Development Corporation (the "corporation") received a request for "[a]ny Travis County contracts, correspondence, or other documents regarding the Vision Village project, Vision Village, Inc., A&R Vision, Inc., or other people or corporations." You indicate that you have released some of the responsive information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that you indicate that a portion of the submitted information is not responsive to the instant request. We agree that this e-mail as well as another e-mail, which we have marked, are not responsive to the instant request for information and, therefore, need not be released to the requestor.

Next, we address your argument that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses can constitute highly intimate or embarrassing information for purposes of privacy. *See Open Records*

Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree that some of the submitted information is confidential under the common law right to privacy and must, therefore, be withheld under section 552.101 of the Government Code. We have marked this information.

Finally, we address your argument that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.*

You contend that one part of the submitted information consists of client confidences from the corporation to its attorney. You also claim that another portion of the submitted information consists of the attorney's legal advice and opinion. Based on your arguments and our review of the information, we agree that the information you have marked under section 552.107 is excepted from disclosure thereunder and may be withheld.

In summary, some of the submitted information is not responsive to the request for information and, therefore, need not be released to the instant requestor. You must withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with common law privacy. Furthermore, you may withhold the information you sought to withhold under section 552.107 of the Government Code. You must release the remainder of the submitted 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).

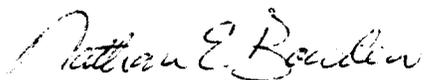
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Ref: ID# 151929

Enc: Submitted documents

c: Mr. Stephen Scheibal
Austin American-Statesman
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(w/o enclosures)