



December 11, 2001

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-5771

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155950.

The Texas Department of Human Services (the “department”) received a request for “all documents associated with an investigation involving the conduct of the [department] and New Horizons Nursing Center in Odessa, Texas.” You inform us that the department has released much of the requested information, but claim that certain responsive information that you have marked is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and various state and federal statutes. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act’s] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You acknowledge that the department failed to request a decision within the ten business-day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you claim that the requested information is protected by a right of privacy as well as by state and federal statutes, and that therefore it is excepted from disclosure under section 552.101 of the Government Code. The application of section 552.101 presents a compelling reason to overcome the presumption of openness. We will thus address your arguments against disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that a portion of this information is confidential pursuant to sections 12.003 and 21.012 of the Human Resources Code. Sections 12.003 and 21.012 prohibit the disclosure of information concerning clients of a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See Hum. Res. Code §§ 12.003, 21.012; see also 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.301; Open Records Decision Nos. 584 (1991), 166 (1977).* Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See Hum. Res. Code § 21.012* (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients

of department's assistance programs to purposes directly connected with administration of programs); *see also* Open Records Decision No. 166 (1977).

It appears that release of the information you claim is confidential under sections 12.003 and 21.012 of the Human Resources Code would not be for purposes directly connected with the administration of the department. It also appears that this information constitutes "any information concerning" persons applying for or receiving assistance. Therefore, we agree that the information you have marked is confidential under sections 12.003 and 21.012 of the Human Resources Code and must be withheld from disclosure under section 552.101 of the Government Code, except where indicated. We have also marked additional information that is confidential under sections 12.003 and 21.012 and that must be withheld under section 552.101. (See blue tag).¹

You also claim that some of the submitted documents are medical records that are protected from disclosure under section 552.101 in conjunction with the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. The MPA provides that "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." Occupations Code § 159.002(b). Upon review of the information you have marked as coming within the MPA, we conclude that none of this information constitutes a medical record for purposes of the MPA, and therefore, none of the submitted information may be withheld under that statute.

To summarize, pursuant to section 552.101 of the Government Code, the department must withhold the information it has marked as confidential under sections 12.003 and 21.012 of the Human Resources Code, except where we have indicated otherwise. The department must also withhold additional information under section 552.101 that we have marked as confidential under sections 12.003 and 21.012. None of the submitted information may be withheld under the MPA, and thus, the remainder of the submitted information must be released 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

¹Based on this finding, we need not reach your argument under section 552.101 and common-law privacy.

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 Texas Building and Procurement 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# 155950

Enc. Submitted documents

c: Ms. Lynne Renfro
Texas Health Enterprises, Inc.
401 North Elm
Denton, Texas 76201
(w/o enclosures)