



March 19, 2002

Mr. Charles D. Olson
Haley Davis
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2002-1359

Dear Mr. Olson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159965.

The City of Valley Mills (the “city”), which you represent, received a request for a report generated by the Texas Department of Human Services (the “TDHS”) regarding the death of a nursing facility resident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception claimed, the information submitted, and the comments provided by TDHS. *See* Gov’t Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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, such as sections 242.126 and 242.127 of the Health and Safety Code. Section 242.126(g) states that TDHS must make investigation reports of abuse or neglect public on request, but that the names of the following individuals must be withheld:

- (1) any resident, unless [TDHS] receives written authorization from a resident or the resident’s legal representative requesting the resident’s name be left in the report;
- (2) the person making the report of abuse or neglect or other complaint; and

- (3) an individual interviewed in the investigation.

Section 242.127 provides as follows: “A report, record, or other working paper used or developed in an investigation and the name, address, and phone number of any person making a report under [subchapter E, chapter 242] are confidential and may be disclosed only for purposes consistent with rules adopted by the Texas Board of Human Services or the designated agency.” Health & Safety Code § 242.127. In addition, TDHS adopted section 19.2010 of title 40 of the Texas Administrative Code, which applies to investigations of complaints of abuse, neglect, and exploitation at nursing facilities and related institutions. Section 19.2010 provides in part as follows:

- (a) Confidentiality. All reports, records, and working papers used or developed by the [TDHS] in an investigation are confidential and may be released to the public only as provided below.

- (1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to [TDHS] as part of the investigation.

In this case, TDHS investigated a complaint of abuse or neglect of a nursing facility resident under the authority of chapter 242 of the Health and Safety Code. We therefore agree that the submitted report is subject to sections 242.126 and 242.127 of the Health and Safety Code. After reviewing the submitted report, we conclude that all personally identifiable information in the report is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 242.126 and 242.127 of the Health and Safety Code and section 19.2010 of title 40 of the Texas Administrative Code.¹ Accordingly, you must withhold from disclosure the information we have marked in Exhibit E. The remaining 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 benefit of such an appeal, the governmental body must file suit within 10 calendar days.

¹ As we are able to make this determination, we need not address the other arguments raised.

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).

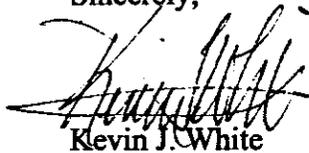
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kevin J. White

Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 159965

Enc. Submitted documents

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