



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 13, 2003

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

OR2003-1684

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# 177869.

The Texas Department of Human Services (the "department") received a request for "all deficiencies cited during [a specified period] for the [a]gency known as 'Texas Home Health.'" You state that you are releasing some of the responsive information. You state that you are withholding information identifying an individual contained in federal Health Care Financing Administration 2567 forms pursuant to a previous determination issued by this office in Open Records Letter 01-5348 (2001). *See* Open Records Decision No. 673 (2001) (previous determinations generally). You claim that some of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "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 certain information in the state forms titled "Statement of Licensing Violations and Plan of Correction" is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. Section 142.009(d) states that "reports, records, and working papers used or developed in an investigation . . . are confidential and may not be released or made public except: (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency." Health & Safety Code § 142.009(d)(5). You acknowledge that section 142.009(d)(5) requires the department to release these state forms; however, you contend the department must withhold the names of certain individuals contained within the forms under section 142.009(d)(5). Based on your representations and our review of the

submitted information, we conclude that the department must withhold the names that you have highlighted in pink under section 552.101 in conjunction with section 142.009(d)(5).

You also argue that some of the responsive information, which you have marked, must be withheld under the Medical Practice Act (the "MPA"). Access to medical records is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) 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.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the submitted information to show which portions reflect information from medical records subject to the MPA.

In summary, you must withhold the names that you have highlighted under section 552.101 in conjunction with section 142.009(d)(5). We have marked the information taken from medical records that may be released only as provided under the MPA. You must release the remaining 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).

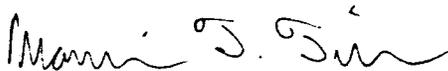
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Texas 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 177869

Enc: Submitted documents

c: Ms. Kathryn Fox  
Director  
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(w/o enclosures)