



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 2, 2003

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of Health
1100 West 29th Street
Austin, Texas 78756-3199

OR2003-2977

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180357.

The Texas Department of Health (the "department") received a request for a specified investigation. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the department states, and we agree, that it has not sought an open records decision from us regarding this request for information within the statutory ten and fifteen business day period of time outlined in section 552.301 of the Government Code. See Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is now public. See Gov't Code § 552.302; see also *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is now public, a governmental body must provide this office with compelling reasons as to why the information should not be disclosed. See *Hancock*, 797 S.W.2d at 381. We note that the applicability of section 552.101 to information that is requested of a governmental body provides such a compelling reason. Since the department claims that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code, we will address this claim with respect to the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with chapter 48 of the Human Resources Code.¹ Chapter 48

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

governs investigations and protective services for elderly and disabled persons. Section 48.101 of that chapter provides in pertinent part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. The submitted documents consist of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48 or in providing services as a result of an investigation. We note that such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. You state that none of the exceptions outlined in section 1.207 of title 25 of the Texas Administrative Code are applicable in this instance. Based on our review of your representations and the submitted information, we conclude that the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources 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 have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

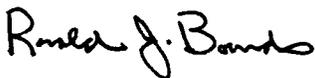
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 180357

Enc. Submitted documents

c: Mr. Reed Teckenbrock
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(w/o enclosures)