



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 22, 2003

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-5033

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184637.

The Harris County Office of Housing and Economic Development (the "county") received a request for information relating to any lead-based paint inspections, risk assessments, or abatement reports from the last five years. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. In addition, you have notified third party Lead Based Paint Detection Corporation ("LBP") of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information.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." This exception protects information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (information made confidential by statute) 611 at 1 (1992) (common law privacy). Although

¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

you assert that portions of the requested information are confidential, you have not directed our attention to any law under which any of the submitted information is deemed to be confidential for purposes of section 552.101, nor are we aware of any such law. We thus have no basis for concluding that the submitted information is confidential by law, and it may not be withheld under section 552.101 on that basis.

In its brief to this office, LBP argues that “medical information on children” should be withheld. However, the sample of records submitted by the county does not include any medical information. Therefore, this ruling does not address such information and is limited to the information submitted as responsive by the county. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from this office must submit copy of specific information requested, or representative sample if voluminous amount of information was requested). Because the claimed exceptions do not apply and none of the information contained in the submitted sample is confidential by law, the county must release the requested 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).

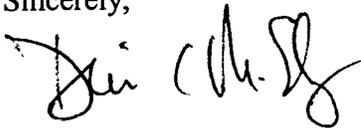
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 184637

Enc. Submitted documents

c: Mr. Thomas A. Bazan
P.O. Box 2786
Houston, Texas 77252
(w/o enclosures)

Mr. Joe Isaac
Lead Based Paint Detection Corp.
3334 Richmond, Suite 210
Houston, Texas 77098
(w/o enclosures)