



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 31, 2003

Ms. Rebecca L. Payne  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2003-9411

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192671.

The Texas Department of Human Services (the "department") received a request for information relating to the requestor, including her personnel file and information pertaining to her work performance. You inform us that the department will release some of the requested information. You claim that other responsive information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and have reviewed the information you submitted.<sup>2</sup>

You concede that the department has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than

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<sup>1</sup>You inform us that the department has abandoned the other exceptions to disclosure that it initially raised in requesting this ruling.

<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

You inform us that the department received this request for information on September 11, 2003, asked the requestor to clarify her request, and received written clarification on September 22, 2003.<sup>3</sup> You submitted the department's arguments against disclosure and the representative sample of the information at issue on December 8, 2003. Thus, the department did not comply with section 552.301(e) in requesting this decision, and therefore the submitted information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). In this instance, the department claims that much of the submitted information is confidential under section 552.101 of the Government Code. As a claim under this exception can provide a compelling reason for non-disclosure under section 552.302, we will address the applicability of section 552.101 to the information that you seek to withhold.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 provides in relevant part:

(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

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<sup>3</sup>*See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of narrowing or clarifying request for information); Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which communications with requestor to clarify or narrow request for information toll ten-business-day deadline under Gov't Code § 552.301(b)).

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) (emphasis added). 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.” *Id.* at 3. 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 also* 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. § 431.300 *et seq.*; Hum. Res. Code § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 166 (1977).

You contend that the submitted documents consist of or contain information that is made confidential under sections 12.003 and 21.012 of the Human Resources Code. You inform us that this information relates to clients of the department who are Medicaid recipients or have been determined to be financially eligible for the assistance programs to which the submitted client information pertains. You also inform us that the release of the information in question in this instance would not be for a purpose directly connected with the administration of the programs to which the information pertains. Based on your representations and our review of the information at issue, we conclude that the documents and portions of documents that you have marked as consisting of client information are confidential under section 12.003 of the Human Resources Code. Therefore, the department must withhold that information under section 552.101 of the Government Code as information made confidential by law. The rest of the submitted information must be released. As we are able to make this determination, we need not address your other arguments against disclosure.

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).

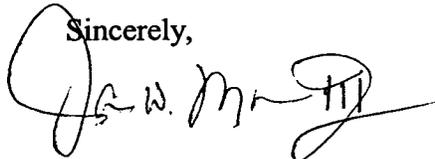
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over a large, loopy initial "J".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 192671

Enc. Submitted documents

c: Ms. Diana G. Gonzalez  
1919 Garfield  
Laredo, Texas 78041  
(w/o enclosures)