ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2004

Ms. Mary Ann Slavin
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2004-4163

Dear Ms. Slavin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201905.

The Texas Department of Health (the "department") received a request for all correspondence since September 1, 2003 to or from officials at Texas Southern University regarding a tobacco prevention contract. You state that you released some information. You claim that the submitted 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 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. Section 531.1021 of the Government Code provides in relevant part as follows:

> (g) All information and materials subpoenaed or compiled by the office [of inspector general] in connection with an investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office [of inspector general] or its employees or agents involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

You state that the submitted information pertains to monitoring/audit activities conducted by department personnel who have been transferred to the Office of the Inspector General ("OIG") effective January 1, 2004. You state that the submitted information relates to irregularities discovered through contract monitoring. You further state that the submitted information has been gathered and/or created as a part of a currently active investigation now at OIG and that the information at issue is in OIG's monitoring/investigative file. After review of your arguments and the information at issue, we find that the submitted information is confidential under section 531.1021(g) and must be withheld under section 552.101 of the Government 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,

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/krl

Ref: ID# 201905

Enc. Submitted documents

c: Ms. Polly Ross Hughes
Houston Chronicle
1005 Congress Avenue, Suite 770
Austin, Texas 78701
(w/o enclosures)