



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2004

Ms. Mitzi Chafetz
Public Information Officer
Texas Funeral Service Commission
P.O. Box 12217
Austin, Texas 78711

OR2004-4990

Dear Ms. Chafetz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203790.

The Texas Funeral Service Commission (the "commission") received a request for complaints and the disposition of the complaints filed against All Faiths Funeral Services. 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.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 section encompasses information protected by other statutes. Section 651.203 of the Occupations Code provides that "[i]nformation in a [complaint file], other than information relating to a complaint that has not reached a final disposition, is public information." We conclude that this language makes confidential information relating to a complaint that has not reached a final disposition. You state that the submitted information relates to a complaint that is open and under investigation. Based on your arguments and our review of the submitted information, we agree that the submitted information is confidential under section 651.203(b) of the Occupations Code and, thus, is excepted from disclosure pursuant

¹We note that you have submitted additional documents that are not responsive to the instant request. We therefore do not address the public availability of the additional documents in the present ruling.

to section 552.101 of the Government Code. Accordingly, you must withhold the submitted information from 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 that reads "Melissa Vela-Martinez". The signature is written in a cursive style with a large, sweeping flourish at the end.

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 203790

Enc. Submitted documents

c: Mr. Jim McNabb
Managing Editor
KXAN 36
P.O. Box 490
Austin, Texas 78767
(w/o enclosures)