



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2004

Ms. Margaret A. Roll  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2004-6649

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206697.

The Texas Department of Human Services (the "department") received a request for information regarding a specific complaint at Desert Springs Alzheimer Special Care Center. You state that you will provide the requestor with some of the requested information. You claim, however, that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department failed to seek an open records decision from this office within the statutory ten-day period. *See* Gov't Code § 552.301(b). In addition, you failed to submit, within fifteen business days, the department's written comments explaining why its claimed exceptions apply and the requested records. *See* Gov't Code § 552.301(e)(1)(A), (D). The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *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 public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of section 552.101 provides such a compelling reason, we will address your arguments against disclosure.

You claim that portions of the submitted information are excepted from disclosure under section 552.101 in conjunction with section 48.101 of the Human Resources Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code §552.101. This section encompasses information protected by other statutes. Section 48.101 provides in relevant 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.

Hum. Res. Code § 48.101(a). You inform this office that the department is responsible for licensing assisted living facilities. You further state that, as the licensing agency, the department is also responsible for investigating complaints of abuse, neglect, or exploitation involving these types of facilities. *See id.* § 48.301. Based on your representations, we conclude that the submitted information constitutes files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48 of the Human Resources Code or in providing services as a result of an investigation.

Section 48.101 further provides that "[c]onfidential information may be disclosed only for a purpose consistent with this chapter and as provided by [Department of Family and Protective Services] or investigating state agency rule and applicable federal law." *Id.* § 48.101(b). You inform this office that the rules adopted by the department for the release of information used or developed in an investigation are found at section 92.106 of title 40 of the Texas Administrative Code. Section 92.106 provides in relevant part:

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential, and may be released only as provided in this subsection.

...

(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

40 T.A.C. § 92.106(a)(2). The submitted information consists of both working papers and completed reports from an investigation conducted pursuant to chapter 48 of the Human Resources Code. We have marked the personally identifiable information in the completed report that is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code and section 92.106 of title 40 of the Texas Administrative Code. We further conclude that the working papers used or developed during the course of the underlying investigation are confidential under section 48.101 and must be withheld in their entirety. We have marked the documents accordingly.

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).

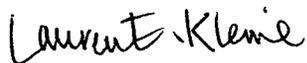
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/sdk

Ref: ID# 206697

Enc. Submitted documents

c: Mr. Robert G. Neill, Jr.  
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(w/o enclosures)