



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2005

Mr. Donald Jansky
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2005-01638

Dear Mr. Jansky:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219296.

The Texas Department of State Health Services (the "department") received a request for all complaints concerning the Bartlett Volunteer Fire Department ("BVFD") and certain information concerning BVFD's medical first responders. You claim that the responsive complaint is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, we note that you have not submitted any information pertaining to the request concerning BVFD's medical first responders. As you have not submitted this information, we assume the department has released it to the extent that it existed on the date the department received this request. If the department has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We note however, the Act does not require a governmental body to disclose information that did not exist at the time that the government body received the request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Open Records Decision No. 452 at 3 (1986).

We now turn to your argument related to the complaint. 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, including section 773.0612 of the Health and Safety Code. Section 773.0612(a) of the Health and Safety Code provides that the department "is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter."¹ Section 773.0612(b) provides that "[a] report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the board." You indicate that the complaint at issue is being used in an investigation under section 773.0612 of the Health and Safety Code. Based on your representation, we conclude that the submitted information is confidential under section 773.0612(b) and must be withheld from disclosure under section 552.101.

Finally, you ask this office to issue the department a previous determination authorizing it to withhold reports, records, and working papers used or developed in an investigation under section 773.0612 of the Health and Safety Code. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the department must withhold this type of information under section 552.101 of the Government Code in conjunction with section 773.0612(b) of the Health and Safety Code. *See* Open Records Decision No. 673 (2001). However, this previous determination is not applicable to information to which the requestor may have a right of access under another provision of law. *See, e.g.*, Occ. Code § 159.002 *et seq.* (medical records); *id.* § 201.402 *et seq.* (chiropractic records); *id.* § 258.102 *et seq.* (dental records); Health & Safety Code § 611.002 *et seq.* (mental health records). So long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information requested of the department under Chapter 552 of the Government Code. *Id.*

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).

¹Although section 773.0612 refers to the Texas Department of Health, *see* Health & Safety Code § 773.003(7), we note that the Texas Department of Health became part of the Texas Department of State Health Services on September 1, 2004. *See* Texas Department of State Health Services Web site, at <http://www.tdh.state.tx.us> (last visited Feb. 24, 2005); *see also* Acts 2003, 78th Leg., R.S., ch. 198, eff. Sept. 1, 2003.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 219296

Enc. Submitted documents

c: Ms. Valerie Bartlett
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(w/o enclosures)