



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2005

Ms. Sylvia F. Hardman
General Counsel
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard, Suite 300
Austin, Texas 78756

OR2005-03902

Dear Ms. Hardman:

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# 223503.

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for all case files concerning the requestor, including complaints associated with his files and information concerning telephone contacts with department managers and commissioners concerning the requestor's files. You state that you have released most of the information to the requestor. 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.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The department failed to submit general written comments, a copy of the written request, or a copy of the information requested or

representative samples within the fifteen business day deadline as required by section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your claims under this exception.

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. You claim that the submitted information is excepted from disclosure under section 552.101 in conjunction with section 361.38(c) of title 34 of the Code of Federal Regulations.

Section 361.38 is one of the regulations that the Commissioner of the Rehabilitation Services Administration (the "Commissioner") promulgated to implement chapter 16 of title 29 of the United States Code, which governs the administration of state vocational rehabilitative services. The purposes of chapter 16 include empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through statewide workforce investment systems. *See* 29 U.S.C. § 709(c), 29 U.S.C. § 701(b). Section 361.38 provides, in part

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in

which case the information must be released to the court-appointed representative.

34 C.F.R. § 361.38(c)(1), (2). You advise that the department is the “State unit” in Texas that is responsible for providing vocational rehabilitation, or vocational and other rehabilitation, to individuals with disabilities. *See* 29 U.S.C. § 721(a)(2). Further, pursuant to section 721 of title 29 of the United States Code, the department, as the Texas State unit, must provide for methods of administration as are found by the Commissioner to be necessary for the proper and efficient administration of the department’s program for providing vocational rehabilitation and vocational and other rehabilitation to individuals with disabilities. *See* 29 U.S.C. § 721(a)(6).

You state that, under the authority provided to the department as the Texas State unit for rehabilitative services, the department has determined the records at issue to be potentially harmful to the requestor.¹ *See* 34 C.F.R. § 361.38(c)(2). As such, upon review of the submitted information and your arguments, we find that the submitted information may only be released in accordance with section 361.38(c) of the Code of Federal Regulations.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

¹You state that the department has advised the requestor that in accordance with department policy, the information at issue is considered potentially harmful and that it must be released to him through a third party chosen by him, which may include among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent him, in which case the information will be released to the court-appointed representative.

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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 223503

Enc. Submitted documents

c: Mr. Joseph Love
2946 Highland Lakes Drive
Missouri City, Texas 77459
(w/o enclosures)