ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2005

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

OR2005-10979

Dear Mr. Meador:

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# 237499.

The Texas Department of State Health Services (the "department") received a request for information related to the investigation of a complaint against a named social worker. You claim that the requested 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.

This office recently issued Open Records Letter No. 2005-10449A (2005), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to information subject to section 505.2545(h) of the Occupations Code. Therefore, pursuant to that previous determination, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 505.2545(h) of the Occupations Code. Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a

decision from this office to withhold information in response to future requests). Because our ruling on this issue is dispositive, we do not address your arguments against 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, 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).

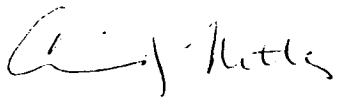
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 237499

Enc. Submitted documents

c: Ms. Tamara Bell
2615 South Ong
Amarillo, Texas 79109
(w/o enclosures)