



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2006

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2005-03203

Dear Mr. Smith:

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# 245183.

The Texas Health and Human Service Commission (the "commission") received a request for all reports from both the Office of Civil Rights (the "OCR") and Office of Inspector General (the "OIG") of the commission regarding Integrated Eligibility. The requestor subsequently modified her request to include only the most recent reports of the OCR and OIG. You indicate that you have provided the requestor with a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that persons may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses information protected by other statutes. You claim that sections 12.003 and 21.012 of the Human Resources Code make a portion of the requested information confidential. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the [commission]'s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (commission shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of commission's assistance programs to purposes directly connected with administration of programs); 42 C.F.R. § 431.306(a) ("The [state] agency must have criteria specifying the conditions for release and use of information about [Medicaid] applicants and recipients."), (d) ("agency must obtain permission from a family or individual . . . before responding to a request for information from an outside source"); Open Records Decision No. 166 (1977).

You state that the documents in Exhibit B contain information that identifies, or could lead to the identification of Medicaid, Food Stamp and Temporary Assistance for Needy Families recipients. You further state that release of the submitted information is not "for purposes directly connected for use in the administration of a health and human service program." *See* 42 C.F.R. § 431.302 (setting forth purposes directly related to state Medicaid and Medicare administration); 7 C.F.R. § 272.1(c) (use or disclosure of information obtained from Food Stamp applicant or recipient households is restricted to persons specifically listed herein); 45 C.F.R. § 205.50 (limits the use or disclosure of information concerning applicants and recipients of assistance under a state plan for financial assistance under title IV-A of the Social Security Act). Consequently, we agree that the commission must withhold the information in Exhibit B from disclosure under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resource Code.

You also contend that page two of Exhibit C is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in

litigation with the agency.” Gov’t Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6.

An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *See Arlington Indep. Sch. Dist. v. Texas Atty. Gen.*, 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no writ); Open Records Decision No. 615 at 4-5.

You state that the information you seek to withhold under section 552.111 relates to policy deliberations among commission staff concerning the commission’s evaluation of staffing proposals. Upon review, we agree that page two of Exhibit C contains advice, recommendations, opinions, and other material reflecting the policymaking processes of the commission. Thus, page two of Exhibit C may be withheld pursuant to section 552.111.

In summary, the commission must withhold the information in Exhibit B from disclosure under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resource Code. In addition, page two of Exhibit C may be withheld pursuant to section 552.111 of the Government Code. As our ruling is dispositive, we need not address your remaining 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).

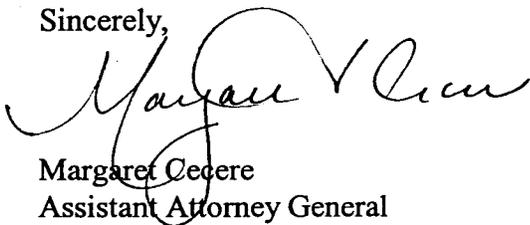
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/sdk

Ref: ID# 245183

Enc. Submitted documents

c: Ms. Carrie Tournillon
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(w/o enclosures)