



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2007

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

OR2007-03107

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# 273797.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to the state's Medicaid appeals and pharmacy benefit management contracts. You state that most of the requested information is being released. You take no position with respect to the public availability of the information that you have submitted. You believe, however, that the submitted information may implicate the proprietary interests of ACS State Healthcare, LLC ("ACS"). You notified ACS of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We received correspondence from an attorney for ACS. We have considered ACS's arguments and have reviewed the submitted information.²

We first note that information relating to ACS's contract with the commission is encompassed by previous open records letter rulings that are now the subject of pending litigation in *ACS State Healthcare, L.L.C. v. Abbott*, No. GN-06-004664, 98th District Court, Travis County, Texas; *ACS State Healthcare, L.L.C. v. Abbott*, No. GN-06-003353, 98th District Court, Travis County, Texas; and *ACS State Healthcare, L.L.C. v. Abbott*, No.

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²We note that the commission has specifically informed this office that Amendment 28 to its contract with ACS has been released to the public. Therefore, we need not address ACS's arguments with regard to that information.

GN-06-002414, 250th District Court, Travis County, Texas. Accordingly, we do not address the public availability of the information that is the subject of those rulings and will allow the trial court to determine whether that information must be released to the public.

We next note that the submitted information is the subject of Open Records Letter No. 2007-02688A (2007). We have not been informed of any change in the law, facts, and circumstances on which that ruling is based. Therefore, the commission must dispose of the submitted information in accordance with Open Records Letter No. 2007-02688A. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). As we are able to make this determination, we need not address ACS's 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

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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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 273797

Enc: Submitted documents

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