



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2007

Mr. Bret Norbraten
General Counsel
Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2007-08229

Dear Mr. Norbraten:

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# 282416.

The Department of Aging and Disability Services (the "department") received a request for the visitor's logs and twenty-one categories of information pertaining to a named individual. You state that you have previously answered categories 13 and 19 of the April 9, 2007 request; thus we presume you have released this information. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant request for information). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that the April 9, 2007 request includes a question asking whether specified staff members spoke Spanish. The Act does not require a governmental body to answer

¹We assume that the representative samples of records submitted to this office are 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.

general questions, perform legal research, or create new information in response to a request for information. However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989)*. In this instance, we find that the requestor's inquiry is sufficiently specific to enable the district to identify any responsive information that is within the district's possession or control, and that this question is not represented by submitted sample of information. *See Open Records Decision No. 483 at 2 (1987)* (stating that the Act requires no particular request form or "magic words"). Thus, to the extent that you maintain information responsive to this inquiry, we assume you have released it. If you have not released such information, then you must do so now.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The department received the requests for information on April 6 and April 9, 2007 but did not request a ruling from this office until April 24, 2007. Thus, because the request for a ruling was not received by the ten business day deadline the department failed to comply with the procedural requirement mandated by section 552.301(c).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; 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 section 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)*. Section 552.108 of the Government Code, which protects law enforcement interests, is a discretionary exception and generally does not provide a compelling reason to overcome the presumption of openness. *See Open Records Decision No. 586 (1991)* (governmental body may waive predecessor to section 552.108). However, because sections 552.101 and 552.107(2) can provide a compelling reason to overcome this presumption, we will address your arguments under these exceptions.

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. Section 595.001 of the Health and Safety Code provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of

a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.” Health & Safety Code § 595.001. You state that the submitted documents are “records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the [Mexia] State School’s provision of mental retardation services to the person.”² You also explain the requestors have not demonstrated that they has a right of access to the submitted records under section 595.003 or 595.004 of the Health and Safety Code. Having considered your representations and reviewed the submitted records, we agree that most of the submitted information is confidential under section 595.001 of the Health and Safety Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code as information made confidential by law.

The department contends that the remaining autopsy report is the subject of a protective order. Section 552.107(2) of the Government Code excepts from required public disclosure information if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). The department provides us with a copy of the protective order from the Limestone County Justice Court, which prohibits the release of the autopsy report at issue by any governmental body. Thus, we conclude that the department must withhold the marked autopsy report pursuant to section 552.107(2) of the Government Code.

In summary, you must withhold the marked information under section 552.101 in conjunction with section 595.001 of the Health and Safety Code. You must withhold the marked autopsy report under section 552.107(2).

The department also asks this office to issue a previous determination permitting the department to withhold information pertaining to the provision of mental retardation services under section 552.101 of the Government Code in conjunction with chapter 595 of the Health and Safety Code. We decline to issue such a previous determination at this time. Accordingly, 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

²Although your brief states that the records pertain to the provision of services by Denton State School, the requests and records all pertain Mexia State School. Thus, we understand you to state that the records relate to the provision of services by Mexia State School.

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).

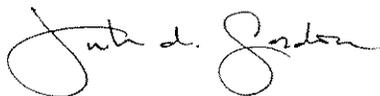
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 282416

Enc. Submitted documents

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