



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2007

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

OR2007-10072

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# 285950.

The Health and Human Services Commission (the "commission") received a request for "any and all communication between the Office of Inspector General [(the "OIG")] and [Texas Medicaid and Health Care Partnership ("TMHP")] regarding [a named doctor] from January 2006 up to the present[,] including "emails, letters, memorandums, and notes on phone calls. In particular, . . . any and all communication detailing how TMHP should handle the manual review of claims filed by [the named doctor]." You indicate that a portion of the requested information has been provided to the requestor. You claim that the remaining 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 representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert that the information at issue may be subject to a previous determination issued by this office. In Open Records Letter No. 2004-8876 (2004), this office issued a previous

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<sup>1</sup>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.

determination allowing the commission to withhold “all information and materials compiled by the OIG in connection with OIG investigations under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code” without the necessity of requesting a decision from this office. *See* Open Records Decision No. 673 at 7 (2001) (establishing criteria for previous determinations issued by this office). You state that the information at issue consists of communications between the OIG and TMHP, a contractor of the commission, regarding the named doctor, who is the subject of a pending OIG investigation. You further state that all communications between the OIG and TMHP “are considered to be part of the currently pending investigation, including any specific instructions from [the commission] on how TMHP should handle the manual review of claims[.]” Based on your representation and our review of the information at issue, we conclude that Open Records Letter No. 2004-8876 functions as a previous determination in this instance. Therefore, the commission must comply with that ruling and withhold the information at issue.

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,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/jb

Ref: ID# 285950

Enc. Submitted documents

c: Mr. Paul Adrian  
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(w/o enclosures)