



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2007

Ms. Mimi Chafetz
Public Information Officer
Texas Funeral Service Commission
P.O. Box 12217
Capitol Station
Austin, Texas 78711

OR2007-10462

Dear Ms. Chafetz:

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# 287595.

The Texas Funeral Service Commission (the "commission") received a request for "all records, reports, or other documents pertaining to inspections performed from January 1, 2001 to the present by the [commission], or affiliated entities, with regard to [a specified mortuary service]," its employees, and Archie D. Acosta. You state that you have released a portion of the requested information.¹ You claim that the remaining 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.²

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

¹You inform us, and provide documentation showing, that the commission sought clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); Open Records Decision No. 633 at 5 (1999) (ten business-day deadline tolled while governmental body awaits clarification).

²We 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. Section 651.203 of the Occupations Code provides that “[i]nformation in a [complaint file maintained by the commission], other than information relating to a complaint that has not reached a final disposition, is public information.” Occ. Code § 651.203(b). We conclude that this language makes confidential information relating to a complaint that has not reached a final disposition. You state that the requested information relates to a complaint that is currently under investigation. Based on your argument and our review of the submitted information, we agree that the submitted information is confidential under section 651.203(b) of the Occupations Code. Therefore, the submitted information must be withheld under section 552.101 of the Government Code.

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).

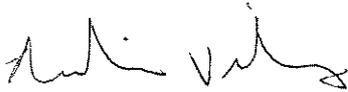
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'Melanie J. Villars', with a stylized flourish at the end.

Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 287595

Enc. Submitted documents

c: Mr. Thomas A. Crosley
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San Antonio, Texas 78212
(w/o enclosures)