



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2007

Mr. Edwin J. Cook  
Regional Services Attorney  
Texas Health & Human Services Commission  
P.O. Box 960  
Edinburg, Texas 78540-0960

OR2007-11221

Dear Mr. Cook:

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# 287791.

The Texas Health & Human Services Commission (the "commission") received two requests from the same requestor for records pertaining to individuals receiving food stamps who applied for the public benefit through a specific commission office location, as well as records pertaining to a specified employee. You state that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the submitted arguments as well as the submitted representative sample of information.<sup>1</sup>

Initially, we must address the commission's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. See Gov't Code § 552.301(e)(1), (2). The commission received both requests on June 18, 2007. Thus, the

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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.

fifteen-day deadline to comply with section 552.301(e) was July 10, 2007. As of this date, you have not submitted to this office any arguments against disclosure nor a copy or representative sample of the information requested with regard to the second request. Consequently, we find that the commission failed to comply with the procedural requirements of section 552.301 pertaining to the second request.

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 a compelling reason exists 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). Generally speaking, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). However, by failing to submit any information responsive to the second request for our review, we have no basis for finding that a compelling reason exists. Thus, to the extent information responsive to the second request existed when the commission received the request, we have no choice but to order you to release the information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

We now turn to your argument regarding information responsive to the first request. 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 Code § 552.101. Section 552.101 encompasses information made confidential by statutes such as sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 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) (emphasis added). 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 department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information and not

merely the clients' names and addresses." *Id.* at 3. 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(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 166 (1977).

You state that the information at issue relates to or could identify recipients of commission benefits. You also inform us that in this instance the release of the information in question would not be for a purpose directly connected with the administration of the programs to which the information pertains. Based on your representations and our review of the information, we conclude that the information you have submitted is confidential under section 12.003 of the Human Resources Code and must be withheld under section 552.101 of the Government Code.

Finally, you ask this office to issue a previous determination that would permit the commission to withhold information relating to applicants for or recipients of commission assistance without the necessity of again requesting an attorney general decision under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time.

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

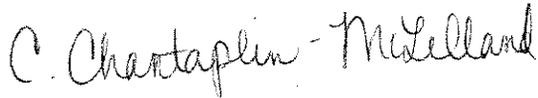
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Chanita Chantaplin-McLelland  
Assistant Attorney General  
Open Records Division

CC/jb

Ref: ID# 287791

Enc. Submitted documents

c: Ms. Melody A. Lopez  
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Aransas Pass, Texas 78336  
(w/o enclosures)