



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2007

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2007-11890

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 289205.

The Office of the Attorney General (the "OAG") received a request for the depositions from Case No. 05-CV-00370 and the nursing peer review of Ms. Rhonda Cubbage arising from facts at issue in said case.¹ The OAG explains it attempted to narrow the scope of the request by providing the requestor with a list of the responsive depositions, but the OAG has received no response from the requestor. *See* Gov't Code § 552.222 (agency may discuss with requestor how to narrow request). While awaiting a response as to that portion of the request, the OAG asserts the nursing peer review is excepted from disclosure under section 552.101 of the Government Code. We have considered the OAG's claimed exception to disclosure and have reviewed the submitted information.

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. This section encompasses information protected by other statutes. Chapter 303 of the Occupations Code addresses the peer review of nurses. Section 303.006 protects all communications made to a nursing peer review committee and makes the

¹The OAG represented Ms. Cubbage and the Texas Department of Criminal Justice ("TDCJ") in a personal injury lawsuit filed by an inmate.

committee proceedings confidential. Occ. Code § 303.006. The information protected by section 303.006 may be released only as provided in section 303.007. Except for the May 3, 2006 letter, which is not responsive to the request and thus not addressed in this decision, Exhibit B consists of the records of and communications made to The University of Texas Medical Branch's Nursing Peer Review and Professional Development Committee.² The records include documentation of the underlying facts, communications with the committee, and findings of the committee. Based on our review, we find that the requested information is protected under section 303.006 of the Occupations Code. As the provisions of section 303.007 do not apply to the requested information, the OAG must withhold the nursing peer review under section 552.101 of the Government Code in conjunction with section 303.006.

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).

²The University of Texas Medical Branch provides health care to TDCJ inmates.

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 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 289205

Enc: Submitted documents

c: Mr. Stephen J. Jabbour
Attorney at Law
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(w/o enclosures)