



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2008

Mr. Dan Meador  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2008-05053

Dear Mr. Meador:

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# 307855.

The Texas Department of State Health Services (the "department") received a request for records pertaining to a specified midwife. You state that you have released most of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address your arguments concerning these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other laws. However, the department does not refer to any law, nor are we aware of any, that would make the submitted information confidential under section 552.101. Thus, the submitted information may not be withheld under section 552.101 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle operator's license or driver's license. Gov't Code § 552.130(a)(1). Therefore, we agree that the department must withhold the Texas driver's license information you have marked under section 552.130.

We also note that you have marked a social security number. Section 552.147(b) of the Government Code allows a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

In summary, the department must withhold the Texas driver's license information you have marked under section 552.130 of the Government Code and may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

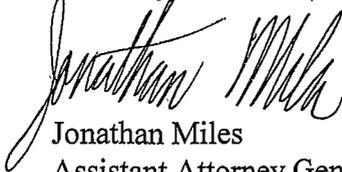
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 307855

Enc. Submitted documents

c: Mr. Alfredo Contreras, Jr.  
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(w/o enclosures)