



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 28, 2008

Mr. Duane F. Keating
Attorney & Counselor At Law
P.O. Box 1127
Hemphill, Texas 75948-1127

OR2008-10171

Dear Mr. Keating:

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# 317658.

The Sabine County Hospital District (the "district"), which you represent, received a request for itemized legal bills from January 1, 2008 through May 15, 2008.¹ You claim that the requested information is excepted from disclosure under the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Evidence.² We have reviewed the submitted information.

We must address the district's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1)

¹As you have not provided this office with a copy of the written request for information, we take our description from your brief.

²Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022. We also note that, while you raise the Texas Rules of Professional Responsibility, we understand you to raise the Texas Disciplinary Rules of Professional Conduct.

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. *Id.* § 552.301(e)(1)(A)-(D). You do not inform us, nor are we able to discern, what date the district received this request for information, but you requested a ruling from this office on May 28, 2008. As of the date of this letter, you have not submitted to this office the written request for information or written comments stating the reasons why the rules you have raised would allow the information to be withheld. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

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 id.* § 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). Although you raise the Texas Rules of Evidence, these rules are discretionary in nature and therefore cannot overcome the section 552.302 presumption of openness. *See* Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 or rule 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 665 at 2 n.5 (2000) (discretionary exceptions in general). In addition, with regard to the Texas Disciplinary Rules of Professional Conduct, we understand you to raise rule 1.05, which concerns confidentiality of client information. *See* Tex. Disciplinary R. Prof'l Conduct Rule 1.05(a)(1). This office has concluded that in the open records context, an attorney's duty of confidentiality is limited to attorney-client privileged material. *See* Open Records Decision No. 575 at 2-5 (1990) (discussing Rule 1.05(a)(1) in the context of predecessor provision of section 552.107(1)). Thus, given its limitation in the open records context, the applicability of rule 1.05 also cannot overcome the presumption of openness of section 552.302. Consequently, the district may not withhold any of the submitted information under these rules. Instead, the district must release the requested information to the requestor.

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). If the governmental body does not file suit over 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).

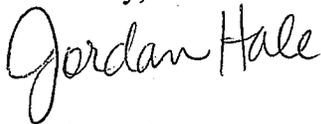
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/mcf

Ref: ID# 317658

Enc. Submitted documents

c: Mr. E.M. Farrell
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(w/o enclosures)