



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2008

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2008-10336

Dear Mr. Norbraten:

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# 317741.

The Texas Department of Aging and Disability Services (the "department") received a request for information related to state school employees who were suspended or terminated for abuse, neglect, or exploitation since 2003.¹ You indicate that you are releasing some responsive information to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether information is excepted from public disclosure.

¹As you have not submitted a copy of the request, we take our description from your brief.

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.

Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office, within fifteen business days of receiving an open records request, a copy of the written request for information. *Id.* § 552.301(e)(1)(B). You indicate that the department received the present request for information on May 14, 2008. However, you did not raise section 552.117 until June 6, 2008. Therefore, the department failed to raise section 552.117 within the period prescribed by section 552.301(b). Additionally, as of this date, you have not submitted to this office a copy of the written request for information. Consequently, the department also failed to comply with the procedural requirements mandated by section 552.301(e).

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 submitted information is public and must be released unless the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, in failing to comply with section 552.301(e), the department has waived its claim under section 552.103; therefore, the department may not withhold any of the requested information under this exception. However, because your claim under section 552.117, along with your timely asserted claim under section 552.101, can provide compelling reasons to overcome the presumption, we will address the applicability of these exceptions to the submitted information.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutory confidentiality provisions. You state that some of the submitted information is excepted from public disclosure under section 552.101 in conjunction with section 595.001 of the Health and Safety Code, which provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004." Health & Safety Code § 595.001. You state that the information at issue consists of records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the Texas state schools' provision of mental retardation services. You further state that the requestor has not

demonstrated that he has a right of access to the information at issue under section 595.003 or section 595.004 of the Health and Safety Code. We have reviewed the information that you have marked, and agree that it is confidential under section 595.001 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

You state that some of the remaining information is excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). If the employees at issue timely elected to keep their personal information confidential under section 552.024, the department must withhold the information we have marked pursuant to section 552.117(a)(1). If the employees at issue did not make timely requests for confidentiality, the information at issue must be released.

In summary, the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code. If the employees at issue made timely requests for confidentiality, the department must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The remaining information must be released 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

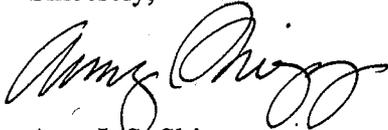
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 317741

Enc. Submitted documents

c: Mr. Jeff Carlton
c/o Mr. Brett Norbraten
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(w/o enclosures)