



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2008

Mr. Mark Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2008-10551

Dear Mr. Connelly:

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# 317908.

The Department of State Health Services (the "department") received a request for information pertaining to a specified investigation of neglect at a specified hospital. You state you will release a portion of the requested information to the requestor. You claim that a portion of the submitted report of contact form is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted report.

Initially, we note, and you acknowledge, that the department has not complied with the time period prescribed by section 552.301 of the Government Code in submitting your request for a decision to this office. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested 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). Because the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will consider the applicability of this exception to the submitted report.

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 48 of the Human Resources Code regulates the investigation of abuse, neglect, or

exploitation of an elderly or disabled person. Hum. Res. Code § 41.101(a). You indicate that the submitted report is a completed investigative report regarding abuse, neglect, or exploitation of an elderly or disabled person, the release of which is governed by section 1.207 of title 25 of the Texas Administrative Code, which was adopted by the department under section 48.101(e) of the Human Resources Code. *Id.* § 48.101(e) (providing that the executive commissioner of the department may adopt rules relating to the release of investigative information by the department); *see also* 25 T.A.C. § 1.207. Section 1.207 provides in relevant part:

(h) The completed investigative report regarding abuse, neglect, or exploitation of an elderly or disabled person shall be released to the subject of a report of abuse, neglect, or exploitation or to that person's legal representative upon request. Any information relating to the reporter's identity or any other individual whose safety or welfare may be endangered by the disclosure shall be blacked out or deidentified[.]

Id. We note that the requestor in this instance is the legal representative of the representative of the estate of the subject of the investigation and as such has a right of access to the completed report under section 1.207(h). Accordingly, you indicate you are releasing most of the completed report to the requestor. You contend, however, that the information you have marked in the report is confidential because it "relates to the identity of the person making the report of abuse/neglect." Upon review, we find that because the information you have marked pertains to a facility and not a person, it does not identify any reporter of abuse, neglect, or exploitation for the purposes of section 1.207(h). Thus, the marked information is not confidential under section 1.207(h) and it must be released to the requestor.¹

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).

¹If the department receives another request for the submitted report from a person who would not have a right of access to the report under section 1.207(h), the department should resubmit the report and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 317908

Enc. Submitted documents

c: Ms. Peggy A. Moomau
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