



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2009

Ms. Amy L. Currier  
Public Information Officer  
Texas Funeral Service Commission  
P. O. Box 12217  
Austin, Texas 78711

OR2009-15714

Dear Ms. Currier:

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# 360787.

The Texas Funeral Services Commission (the "commission") received a request for information pertaining to an investigation involving a named mortuary and its owner.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that a portion of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-14735 (2009). In that ruling, we concluded that the commission must withhold the submitted information under section 552.101 in conjunction with section 651.203 of the Occupations Code. To the extent the requested information is identical to the information previously ruled upon by this office, we conclude, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, that the commission must rely on Open Records Letter No. 2009-14735 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records

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<sup>1</sup>As you have not submitted the original request for information, we take our description from your brief. We also note that the commission asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will next address your argument for the remaining submitted information.

We note that some of the submitted documents, which we have marked, are not responsive to the instant request for information because they were created after the date that the commission received the request. This ruling will not address such non-responsive information and the commission need not release it in response to this request.

Next, we must address the commission'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 requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information as well as a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1). As of the date of this ruling, the commission has not submitted a copy of the original written request for information. Accordingly, the commission failed to comply with the requirements mandated by section 552.301.

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, 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). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the responsive 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. Section 651.203 of the Occupations Code provides that "[i]nformation in a [complaint file maintained by the commission], other than information relating to a complaint that has not

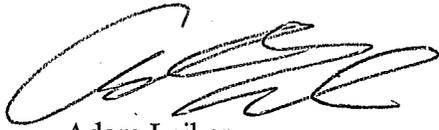
reached a final disposition, is public information.” Occ. Code § 651.203(b). We conclude this language makes confidential information relating to a complaint that has not reached a final disposition. You state the requested information relates to a complaint that was under investigation on the date the commission received the present request for information. Based on your representation, we agree the information at issue is confidential under section 651.203(b) of the Occupations Code. Therefore, the responsive information must be withheld under section 552.101 of the Government Code in conjunction with section 651.203(b) of the Occupations Code.

In summary, to the extent the responsive information is identical to the information previously ruled upon by this office, the commission must continue to rely on Open Records Letter No. 2009-14735 and withhold the identical information in accordance with that ruling. The commission must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 651.203(b) of the Occupations Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_or1.php](http://www.oag.state.tx.us/open/index_or1.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 360787

Enc. Submitted documents

c: Requestor  
(w/o enclosures)