



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2010

Mr. Trent B. Krienke  
Davis & Wilkerson, P.C.  
For Gainesville Hospital District  
P.O. Box 2283  
Austin, TX 78768-2283

OR2010-00512

Dear Mr. Krienke:

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# 366788.

The Gainesville Hospital District d/b/a North Texas Medical Center (the "center"), which you represent, received a request for board candidate petitions, cell phone bills for specified individuals, call logs for specified individuals, photos, video, and audio recordings taken in specified areas, and records of communications with the County Attorney and the Attorney General's office. You state that the center has no responsive information with respect to a portion of the request.<sup>1</sup> You further state that the center has provided the requestor with other responsive information. You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the representative sample of information.<sup>2</sup>

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

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

<sup>2</sup>We 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 that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). In addition, pursuant to section 552.301(e), within fifteen business days of receiving the request, the governmental body must submit to this office (1) 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).

We note that the center received the initial request for information on September 4, 2009 and that the center asked the requestor to clarify the request with respect to the call logs on September 17, 2009. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten-business-day deadline imposed by section 552.301. ORD 663 at 5 (ten-day deadline is tolled during process but resumes, upon receipt of clarification or narrowing response, on day that clarification is received). Thus, the ten-business-day time period to request a decision from this office under section 552.301(b) was tolled on the date that the center sought clarification of the request. *See* Gov't Code § 552.301(b); *see also* Open Records Decision No. 663 at 5 (1999) (clarification does not trigger new ten-business-day time interval, but merely tolls ten-business-day deadline during clarification or narrowing process, which resumes upon receipt of clarified or narrowed response). We note the center received the clarification on October 7, 2009. The center asked the requestor for another clarification to his request on October 8, 2009 and received a clarification on October 12. Accordingly, we conclude that the ten-business-day time period for requesting a decision from our office resumed on October 13, 2009. Thus, the ten-business-day deadline was October 14, 2009, and the fifteen-business-day deadline was October 21, 2009. However, the center did not request a ruling from this office or submit the responsive information until October 30, 2009. Consequently, we conclude that the center failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

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* Gov't Code § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *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). A compelling reason

exists when third-party interests are at stake or when information is confidential under other law. Section 552.136 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. Accordingly, we will address whether the submitted information is excepted from disclosure under this exception.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. You seek to withhold the long distance security codes, which you have marked, from the submitted phone bills. You state that these security codes are used by individuals to make long distance calls from the center’s property. You also state that someone who knows the codes would be able to make costly and unauthorized long distance calls. Upon review, we find that the center must withhold the long distance security codes you have marked under section 552.136 of the Government 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\\_orl.php](http://www.oag.state.tx.us/open/index_orl.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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/dls

Ref: ID# 366788

Enc. Submitted documents

c: Requestor  
(w/o enclosures)