



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2011

Ms. Karen Nelson
Deputy Inspector General and Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2011-06694

Dear Ms. Nelson:

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# 417412.

The Texas Health and Human Services Commission (the "commission") received a request for a copy of the booklet titled "General Principles and Standards for the Office of the Inspector General" and information pertaining to the policies, procedures, and guidelines used by employees relating to food stamps and the investigation of allegations of tampering with government records. You claim some of the requested information is subject to section 552.027 of the Government Code and the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially we address your assertion that the requested guidelines and the booklet titled "General Principles and Standards for the Office of the Inspector General" (the "booklet"), which you have submitted as Exhibit B, are subject to section 552.027 of the Government Code. Section 552.027 provides as follows:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or

¹We 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.

publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information:

books and other materials that are also available as research tools elsewhere to any member of the public. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

Interim Report to the 74th Legislature of the House State Affairs Comm., 74th Leg., R.S., Subcommittee on Open Records Revisions 9 (1994). Therefore, section 552.027 excludes commercially available research material from the definition of "public information." You represent the requested guidelines are set forth in state and federal statutes, which you have listed, that are commercially available to the public. You also state, and provide documentation showing, that the booklet is commercially available from the Association of Inspectors General. Accordingly, we find the listed statutes and Exhibit B constitute commercially available information that falls within the scope of section 552.027 and need not be released to the requestor.

We must address the commission's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body 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). In this instance, you indicate the commission received the request for information February 22, 2011. However, you did not request a ruling from this office until March 10, 2011. Consequently, we find the commission failed to comply with the requirements of section 552.301 in requesting this decision from our office.

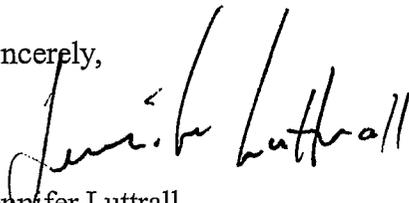
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the

requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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). Although you claim Exhibit C is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the commission may not withhold any portion of Exhibit C on the basis of section 552.108. As you raise no other exceptions to disclosure of this information, Exhibit C must be released.

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 417412

Enc. Submitted documents

c: Requestor
(w/o enclosures)