



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2011

Ms. Cynthia Villareal-Reyna
Section Chief, Agency Counsel
Legal and Regulatory Affairs
Texas Department of Insurance
Mail Code 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-13717

Dear Ms. Villareal-Reyna:

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# 430683 (TDI # 117303).

The Texas Department of Insurance (the "department") received a request for seven categories of information pertaining to "inpatient hospital admissions for worker's compensation patients" and for surveys and guidelines referenced in a specified "[s]taff [r]eport."¹ You state the department has released the information responsive to the six clarified categories. You claim the information responsive to the remaining category is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor.

¹We note the department sought and received clarification of six of the categories in the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We assume the "representative sample" of information 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

Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the department failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code. Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). The department and the requestor agree that the instant request was received by the department on July 6, 2011. As such, the fifteen-business-day deadline was July 27, 2011. The requestor contends, and provides documentation demonstrating, that the department's written comments were sent to the requestor in an envelope postmarked on July 29, 2011. Consequently, we conclude that, in sending the requestor a copy of its written comments, the department did not comply with section 552.301 of the Government Code. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first-class United States mail, common or contract carrier, or interagency mail).

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 assert the information at issue is excepted under section 552.103 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the information at issue may not be withheld under section 552.103 of the Government Code.

As you acknowledge, the information at issue is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental

to the extent those records contain substantially different types of information than those submitted to this office.

body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Therefore, as you raise no further exceptions to disclosure, the information at issue must be released to the requestor, but only in accordance with copyright law.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 430683

Enc. Submitted documents

c: Requestor
(w/o enclosures)