



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2013

Mr. Timothy E. Bray  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2013-17513

Dear Mr. Bray:

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# 502186 (DSHS OR File: 21963/2013).

The Texas Department of State Health Services (the "department") received a request for specified information for programs pertaining to peer support certification, including the Via Hope program. You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified Mental Health America of Texas of the department's receipt of the request for information and of Mental Health America of Texas's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we must address the department's procedural 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). The department received the request for information on July 22, 2013. Thus, the department's ten-business-day deadline to request a ruling was August 5, 2013. However, the department did not submit the request for a ruling in interagency mail until August 6, 2013. *See id.* § 552.308(b). Accordingly, the department failed to comply with the procedural requirements mandated by section 552.301.

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

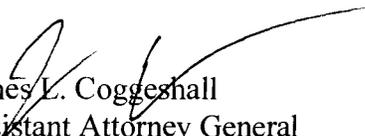
that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). The interests of Mental Health America of Texas are at stake. Therefore, we will consider whether the submitted information must be withheld to protect its interests.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Mental Health America of Texas has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of that third party, and the department may not withhold any portion of the submitted information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department must release the submitted information to the requestor.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 502186

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Peggy Holub  
Finance Manager  
Mental Health America of Texas  
1210 San Antonio Street, Suite 200  
Austin, Texas 78701  
(w/o enclosures)