



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28, 1994

Mr. Larry Perkins  
Interim Executive Director  
Texas Cosmetology Commission  
P.O. Box 26700  
Austin, Texas 78755-0700

OR94-107

Dear Mr. Perkins:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).<sup>1</sup> His request was assigned ID# 21455.

The Texas Cosmetology Commission (the "commission") received an open records request for information regarding any complaints against an individual and her business. Your predecessor provided this office with a copy of one complaint, which he said the commission received from the Texas Department of Health. Apparently, your predecessor refused to disclose the complaint on the grounds that the requestor should seek it from the Department of Health because the Department of Health received and investigated the complaint. In addition, your predecessor claimed that the complainant's name is excepted from required public disclosure by the informer's privilege recognized under section 552.101 of the Government Code (formerly V.T.C.S. article 6252-17a, section 3(a)(1)).

You may not refuse to disclose the complaint merely because you received it from the Department of Health. The fact that a request might be more appropriately directed to another governmental body does not mean that the information may be withheld by a

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<sup>1</sup>The Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

governmental body to which a request is properly directed. Attorney General Opinion JM-266 (1984) at 3. Under section 552.021, a governmental body must release all information it collects, assembles, or maintains in connection with the transaction of official business. The commission received the complaint in this case from the Department of Health in connection with the transaction of commission business. Therefore, the complaint you possess is subject to the Open Records Act, and you must release it in its entirety unless you establish that one of the exceptions to required public disclosure applies.

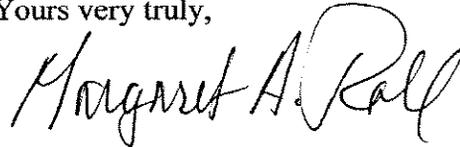
Your predecessor failed to request an opinion from this office within 10 days of receiving the request for information and has not shown a compelling interest to withhold the complainant's identity. The commission received the request for this information on May 28, 1993, and your predecessor requested a decision from this office on July 23, 1993. The Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information that the governmental body wishes to withhold. See Gov't Code § 552.301(a). When a governmental body fails to request a decision from the attorney general within 10 days of receiving a request for information, the information at issue is presumed to be public. See Gov't Code § 552.301(b); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.-Houston [1st Dist.] 1984, no writ). To overcome this presumption, a governmental body must show a compelling interest to withhold the information. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.-Austin 1990, no writ); Open Records Decision No. 552 (1990) at 1. A compelling interest may arise when a third-party's interests are at stake. Open Records Decision No. 552 at 1. However, the informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold the information. Furthermore, your predecessor did not provide any additional information that would constitute a compelling interest. Therefore, because you have not presented this office with a compelling reason why the information should not be released, you must release the complainant's identity at this time.<sup>2</sup>

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<sup>2</sup>In some circumstances, the need of a governmental body, other than the body that failed to seek an open records decision within 10 days of receiving a request, may be a compelling reason for nondisclosure. Open Records Decision No. 586 (1991) at 3. Therefore, you may have been able to withhold the complainant's identity in this case if the Department of Health had asserted a compelling interest in having it withheld. However, your predecessor provided no evidence that the Department of Health possessed such an interest; if such an interest exists, you may wish to seek a reconsideration of this ruling.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open-records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 21455\*

Enclosures: Submitted documents

cc: Mr. Kelly Kolb  
Burleson, Pate & Gibson, L.L.P.  
2414 North Akard, Suite 700  
Dallas, Texas 75201-1748  
(w/o enclosures)

Ms. Susan K. Steeg  
General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756  
(w/o enclosures)