



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Ms. Stacy E. Sallee
Associate Counsel
Texas Health and Human Services
Commission
P.O. Box 13247
Austin, Texas 78711

OR98-1151

Dear Ms. Sallee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114939.

The Texas Health and Human Services Commission (the "commission") received a request for seven categories of documents relating to dentists who have participated in the Medicaid program and certain specified questions concerning those dentists who have had sanctions taken against them under the Medicaid program. In your initial letter to this office, you stated that "[w]e are in the process of gathering the requested information and will provide that to you, as well as our written comments stating the reasons why section 552.103(a) [of the Government Code] applies to the requested information."

Pursuant to section 552.301(b) of the Government Code, a governmental body is required to submit to this office (1) general 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, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the specific information requested or representative samples nor general written comments stating the reasons why the stated exception applies to the requested information as required by section 552.301(b).

Based on section 552.303(c) of the Government Code, this office notified you by facsimile on March 16, 1998, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) of the Government Code failure to comply would result in the legal presumption that the information at issue is public information.

To date, you have not provided our office with the information that was requested in our notification to you. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act. Open Records Decision No. 195 (1978). Therefore, as provided by section 552.303(e), the information at issue is presumed to be public information.

Information presumed public must be released unless the governmental body demonstrates the existence of a *compelling interest* that overcomes this presumption. See *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). In the absence of compelling reasons as to why the information should not be made public, the requested information is presumed public and must be released.¹ Open Records Decision No. 195 (1978); *but see* Gov't Code § 552.352 (distribution of confidential information is a criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 114939

cc: Ms. Tonia L. Lucio
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¹Generally, section 552.103 does not provide a compelling reason to overcome the presumption of openness. Open Records Decision Nos. 630 (1994), 473 (1987).