



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2460

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118786.

The Texas Department of Health (the "department") received a request for "all correspondence, enclosures or any other document provided by Ahmed Rabie or Eumana Home Care regarding" a claim made against Eumana Home Care by Promed Personnel Services. You argue that the responsive requested information is excepted from disclosure by section 552.101 of the Government Code.¹ We have considered the exception you claim and have reviewed the documents at issue.

You assert that the responsive records are confidential pursuant to section 142.009 of the Health and Safety Code. Section 142.009 authorizes the department to conduct investigations regarding the provision of home health, hospice, or personal assistance services. You assert and it appears that the requested records were gathered in a complaint investigation under this section. Health & Safety Code § 142.009(c)(1). Section 142.009(d) of the Health and Safety Code provides:

¹The department, however, has not sought an open records decision from this office within the statutory ten-day deadline. See Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. See *id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

(d) the reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or
- (5) on a form developed by the department that identifies deficiencies found without identifying a person, other than the home and community support services agency.

You inform this office that the documents were used in an investigation under chapter 142. None of the statutory exceptions to confidentiality appear to be present. Health & Safety Code §§ 142.009(d)(1) - (5), (f), (g). Consequently, based upon your assertion, the requested records must be withheld under section 552.101 in conjunction with section 142.009(d).

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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 118786

Enclosures: Submitted documents

cc: Mr. Stephen M. Coleman
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(w/o enclosures)