



December 15, 1999

Mr. Mike Regan
Acting Administrator
Texas Funeral Service Commission
510 South Congress Avenue, Suite 206
Austin, Texas 78704-1716

OR99-3646

Dear Mr. Regan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130289.

The Texas Funeral Service Commission (the "commission") received a request for all correspondence between the commission and certain named individuals, elected officials, and organizations. You contend that the requested information comes under the protection of various exceptions to required public disclosure.

We note at the outset that the commission received the records request on August 12, 1999, but you did not request a decision from this office regarding this matter until October 8, 1999. Consequently, we conclude that you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, at 381. You have not presented this office with compelling reasons for withholding the requested information pursuant to sections 552.103, 552.107(1), or 552.111 of the Government Code. Consequently, we deem these exceptions as being waived. *See* Open Records Decision Nos.

630 (1994) (section 552.107(1) waivable); 470 (1987) (section 552.111 waivable); 542 (1990) (section 552.103 waivable).

You also contend that the requested correspondence is made confidential under section 651.203(b) of the Occupations Code, and thus must be withheld pursuant to section 552.101 of the Government Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The fact that information is deemed confidential by law constitutes a "compelling reason" for withholding that information from the public. Open Records Decision No. 150 (1977).

In this instance, however, you did not submit copies of the requested correspondence to this office for review. Further, contrary to your representation in your October 8, 1999 letter to this office, the requested correspondence was not among the documents you previously submitted to this office in connection with prior decision requests that you have made.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office "a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

In Open Records Letter No. 99-3382 (1999), this office concluded that the commission must withhold from the public pursuant to former section 6D(d) of article 4582b, V.T.C.S., "information obtained by the commission after investigating the complaint." Without having the requested information before us, however, it is impossible for this office to determine whether the records requested here were received or created in conjunction with commission investigations of consumer complaints. Consequently, this office has no basis on which to conclude that the requested correspondence is made confidential under article 4582b.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/jc

Ref: ID# 130289

cc: Mr. Jonathan Buck
1507 Pease Road #6
Austin, Texas 78703
(w/o enclosures)