



March 1, 2001

Mr. Ted M. Kerr
Kerr & Ward, L.L.P.
500 West Texas, Suite 1310
Midland, Texas 79701-4289

OR2001-0778

Dear Mr. Kerr:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144602.

The Midland County Hospital District (the "district"), which you represent, received a request for various agreements entered into by the district, as well as a copy of the district's lease, and its structural/organizational chart. You inform us that a portion of the requested information has been released to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body.

Gov't Code § 552.022(a)(3) (emphasis added). You inform us that the responsive information you have submitted to this office consists of exhibits or attachments to two

agreements entered into by the district: (a) Member Hospital Contract (Point of Service Program) between Blue Cross and Blue Shield of Texas, Inc. and Memorial Hospital and Medical Center; and (b) Participating Hospital Agreement between Midcon Health Plans, L.C., d/b/a HMO Blue, Southwest Texas, and the district. The submitted information also includes agreements that are ancillary to the two aforementioned contracts. You state that each of the submitted documents "provides information about the discount percentages applied to standard retail prices, base rates, per diem prices and reimbursement rates negotiated between Midland Memorial Hospital and Blue Cross, Blue Shield and HMO Blue." We therefore conclude that the submitted information is "information in a . . . contract relating to the receipt or expenditure of public or other funds," and hence, as prescribed by section 552.022, this information must be released to the requestor unless it is confidential under other law.

You argue that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 is a discretionary exception and not "other law" for purposes of section 552.022(a)(3).¹ Thus, we conclude that the submitted information is made public under section 552.022(a)(3) of the Government Code, and therefore it must be released to the requestor.

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

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 144602

Encl. Submitted documents

cc: Ms. Carol D. Satterfield
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(w/o enclosures)