



April 9, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-1427

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145835.

Travis County (the "county") received a request for the personnel file of the requestor; information related to mold problems and air quality; information related to airborne and bloodborne pathogens tests referenced in the requestor's worker's compensation hearing; "all documentations generated by [a named individual] who was employed by the Pro-Med facility or by the facility itself concerning any and all testing they performed at the request of the county" or the medical examiner's office; as well as a copy of the policy on how to minimize personnel turn-over due to Post Traumatic Stress Disorder. You indicate that you have released most of the responsive information to this requestor. However, you have submitted responsive information to this office for review that you claim is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. The requestor has also submitted comments. *See* Gov't Code § 552.304 (permitting person to submitted comments why information should be released or withheld). We have considered the comments of the county and the requestor and have reviewed the submitted information.

Although the county indicates that the request for information "was received by the Travis County Medical Examiner's Office of January 22, 2001," the request indicates on its face that it was sent to the "Travis County Human Resource Management Department," and is date stamped as having been received by "PERSONNEL" on January 17, 2001. We conclude from this evidence that the county received this request for information on January 17, 2001. The county transmitted its request for a decision to this office in this matter on February 5, 2001. The Public Information Act requires a governmental body that wishes to withhold requested information to request a decision from the attorney general as to whether the information is within an exception to disclosure within ten business days of the governmental body's receipt of the request for information. Gov't Code § 552.301(b). Failure to comply with the requirements of section 552.301 results in the presumption that

the information is 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 id.* The county did not timely submit a request for a decision for the requested information. This information is therefore presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. A compelling reason is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). You raise sections 552.107 and 552.111 of the Government Code. These provisions, as applied to the submitted materials, do not implicate confidentiality or the interests of third parties. Therefore, no compelling reason for withholding the information has been demonstrated and the information must be released. *See e.g.* Open Records Decision Nos. 630 at 3 (1994), 473 (1987).

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).

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 Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 145835

Encl: Submitted documents

cc: Mr. Dave Harding
7305 Meadowood Drive
Austin, Texas 78723
(w/o enclosures)