



July 16, 2001

Mr. Allan S. Graves
Assistant District Attorney
Tarrant County
Hospital District Office
1025 South Jennings, Suite 300
Fort Worth, Texas 76104

OR2001-3076

Dear Mr. Graves:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149445.

The Tarrant County Hospital District (the “district”) received a request for several categories of information relating to the North Texas Affiliated Medical Group (“NTAMG”), including: (1) audits of NTAMG, (2) NTAMG budgets, (3) lists of NTAMG physicians and salaries, (4) documents relating to NTAMG referral patterns, and (5) documents relating to the services NTAMG provides for graduate medical education. You indicate that you have made information responsive to categories 1, 2, and 5 available to the requestor. You also indicate that you do not possess information responsive to category 4. Finally, you state that the request for the third category of information implicates the property rights of a third party—NTAMG. Consequently, you notified NTAMG of the request pursuant to section 552.305 of the Government Code. In turn, NTAMG has submitted to this office arguments in support of withholding some of the requested information under section 552.101 of the Government Code. We have considered the submitted argument and reviewed the submitted information.

We begin by noting that it appears you have submitted information responsive to only a portion of the request. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (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, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Although you submitted some information responsive to the request for salary information, it appears you did not submit a copy or representative sample of the information responsive to the request for budgets.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *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). Generally, a compelling reason under section 552.302 is demonstrated only when the information is confidential by law or its release implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). Because you have not submitted the budget information, we have no basis for concluding that a compelling reason exists for withholding it. Thus, we have no choice but to order the responsive budget information released pursuant to section 552.302. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

We next address NTAMG's arguments with respect to the submitted salary information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that certain personal financial information meets the first prong of the privacy test. *See* Open Records Decision Nos. 600 (1992), 545 (1990). NTAMG contends that the requested physician salary information is confidential personal financial information under common law privacy. The district submitted physician salary information that includes, among other things, pay rates, gross salaries, tax information, vacation and sick time, and retirement information of physicians. However, the physicians are not identified in the submitted salary lists. Consequently, we do not believe the submitted salary information constitutes "highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person" because the salary information is not linked to any named individuals. Because we find the salary information is not protected under common law privacy, the district must release the salary information 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).

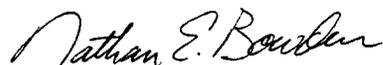
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref.: ID# 149445

Enc.: Submitted documents

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