



October 5, 2001

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2001-4478

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152864.

The Department of Human Services (the "department") received a request for information concerning a complaint about Peterson Home Care in Kerrville, Texas, complaint #98-30646. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, which you have labeled as Attachments C and D.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 142.009(c) of the Health and Safety Code authorizes the department to conduct investigations of complaints regarding the provision of home health, hospice, or personal assistance services. Section 142.009(d) provides as follows:

The reports, records, and working papers used or developed in an investigation made under [section 142.009 of the Health and Safety Code] 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 any deficiencies found without identifying a person, other than the home and community support services agency.

You inform us that Peterson Home Care, the subject of the referenced investigation, provides home health, hospice, or personal assistance services and is regulated by the department under chapter 142 of the Health and Safety Code. The records you submitted to our office as Attachment C constitute "reports, records, and working papers used or developed in an investigation" under section 142.009(c) of the Health and Safety Code. Furthermore, we have no reason to believe that any of the exceptions to confidentiality in section 142.009(d) apply to these records.<sup>1</sup> We therefore conclude that the department must withhold Attachment C in its entirety pursuant to section 552.101 of the Government Code.

Attachment D is a Health Care Financing Administration ("HCFA") Form 2567, statement of deficiencies and plans of correction. You assert that information that identifies Peterson Home Care's representative is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 401.126 and 401.133 of title 42 of the Code of Federal Regulations. These federal regulations require the department to release the HCFA Form 2567 provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988); *see also* Health and Safety Code § 142.009(d)(6). You indicate that because Peterson Home Care's representative commented on the HCFA 2567 form, the facility has had a reasonable opportunity to review and offer comments about the report. Accordingly, we agree that, in compliance with federal and state law, the department must not release to the requestor the information that identifies the Peterson Home Care's representative.

In summary, the department must withhold from disclosure Attachment C in its entirety. In addition, the department must withhold from disclosure information in Attachment D that identifies the facility's representative. The department must release the remaining information in Attachment D to the requestor.

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<sup>1</sup>The records before us do not appear to contain a state form required to be released under section 142.009(d)(5).

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,

A handwritten signature in cursive script that reads "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/

Ref: ID# 152864

Enc: Submitted documents

c: Ms. Patricia L. Pulido  
Wyatt Law Firm, LTD  
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Corpus Christi, Texas 78411  
(w/o enclosures)