OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

February 7, 2002

Mr. Donald Jansky
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2002-0578

Dear Mr. Jansky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158277.

The Texas Department of Health (the "department") received a written request for all records regarding a Medical Advisory Board investigation of the requestor's ability to safely operate a motor vehicle. You contend that the submitted information is made confidential under section 12.097 of the Health and Safety Code, and thus must be withheld from the requestor pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts information from disclosure if it is information considered to be confidential by law either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes. Section 12.097 of the Health and Safety Code provides:

> (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:
>
> > (1) are for the confidential use of the medical advisory board, a panel, or the Department of Public Safety of the State of Texas;
> >
> > (2) are privileged information; and
> >
> > (3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

> (b) *In a subsequent proceeding under Subchapter N, Chapter 521, Transportation Code,*[1] the medical standards division may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:
>
> (1) the Department of Public Safety of the State of Texas;
>
> (2) *the applicant or license holder*; and
>
> (3) the officer who presides at the hearing.

Health & Safety Code § 12.097(a) (footnote in original, emphasis added). The submitted information appears to consist of records considered by the Medical Advisory Board relating to the requestor. Furthermore, you inform us, and the records before us indicate, that there will be no subsequent proceeding as contemplated under section 12.097(b). We therefore conclude that the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 12.097 of the Health & Safety Code.

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

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[1]V.T.C.A., Transportation Code § 521.291 et seq.

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 Texas Building and Procurement 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,

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 158277

Enc: Submitted documents

c: Mr. Sam L. VanLandingham
1205 West Washington
Midland, Texas 79701
(w/o enclosures)