



February 25, 2002

Mr. Don R. Bradley  
Assistant General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2002-0905

Dear Mr. Bradley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159025.

The Texas Department of Health (the "department") received a request for any and all information held by the Bureau of Children's Health and the Children with Special Health Care Needs Division regarding the requestor. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code in its entirety, and that portions of the requested information are excepted under section 552.101 in conjunction with various statutes and regulations, as well as under sections 552.117 and 552.130. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that section 552.022 of the Government Code makes certain information expressly public, unless it is confidential under other law. One category of expressly public information under section 552.022 is "information regarded as open to the public under an agency's policies." Gov't Code § 552.022(a)(15). Some of the submitted information consists of job descriptions. This information, which we have marked, must be released to the requestor unless it is confidential under other law. Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not "other law" for purposes of section 552.022. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Therefore, the department may not withhold the information we have marked (see red flag) under section 552.103 of the Government Code. For the remainder of the submitted information not subject to section 552.022, we will address your argument under section 552.103.

You state that the requestor has filed a charge of discrimination with the Texas Commission on Human Rights (the "TCHR"). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal Employment Opportunity Commission ("EEOC") defers jurisdiction to this agency over complaints alleging employment discrimination. *Id.*

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). You inform us that on October 19, 2001, the requestor was issued a "Notice of Right to File a Civil Action" by the TCHR. You state that this notice gave the requestor 60 days from her receipt of the notice to file a lawsuit. You inform us that the department received the request for information on December 6, 2001, which is less than 60 days from the date of the notice. We therefore conclude that litigation was reasonably anticipated by the department on the date that the request for public information was received. Our review of the records at issue also shows that they are related to anticipated litigation for purposes of section 552.103(a). Thus, you may withhold the requested information not subject to section 552.022 pursuant to section 552.103(a), with the following exception.

We note that some of the submitted information has been seen by the opposing party. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note that you have also raised section 552.101 for a portion of the submitted information seen by the opposing party. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You indicate that a portion of this information pertains to Medicaid recipients and therefore is confidential pursuant to sections 12.003 and 21.012 of the Human Resources Code. Sections 12.003 and 21.012 prohibit the disclosure of information concerning clients of a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* Hum. Res. Code §§ 12.003, 21.012; *see also* 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.301; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides:

- (a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information

concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department’s assistance programs to purposes directly connected with administration of programs); *see also* Open Records Decision No. 166 (1977).

It appears that release of the information you claim is confidential under sections 12.003 and 21.012 of the Human Resources Code would not be for purposes directly connected with the administration of the program. It also appears that this information constitutes “any information concerning” persons applying for or receiving assistance. Therefore, we agree that the information you have highlighted in the submitted information is confidential under sections 12.003 and 21.012 of the Human Resources Code and must be withheld from disclosure under section 552.101 of the Government Code.

To summarize, a portion of the submitted information is public under section 552.022(a)(15) and must be released. The department may withhold the remainder of the submitted information under section 552.103, with the exception of information seen by the opposing party. Within the documents that have been seen and that must be released, the department must withhold the information you have highlighted under section 552.101 in conjunction with section 12.003 of the Human Resources Code. As we resolve your request under sections 552.101 and 552.103, we need not address your other raised exceptions.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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# 159025

Enc. Submitted documents

c: Ms. Kathryn L. Reeves  
15425 Ecorio Drive  
Austin, Texas 78728  
(w/o enclosures)