



April 24, 2002

Mr. George D. Cato
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2002-2112

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161772.

The Texas Department of Health (the “department”) received a written request for the “complete file” concerning a formerly licensed social worker. You contend that the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 505.2545 of the Occupations Code.

Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. We note at the outset, and you acknowledge, that you did not make a timely request for a decision from this office. You state that the department received the records request “on or after January 14, 2002. However, you did not request a decision from this office until February 19, 2002. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed 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 Publ’g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. Gov’t Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). In this instance, because you contend that the requested information is made confidential by other law, we will consider your arguments for non-disclosure.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Section 505.2545 of the Occupations Code provides in relevant part as follows:

(h) All information and materials subpoenaed *or compiled* by [the Texas State Board of Social Worker Examiners] in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure to anyone other than the board or its employees or agents involved in discipline of the holder of a license or order of recognition, except that this information may be disclosed to:

(1) persons involved with the board in a disciplinary action against the holder of a license or order of recognition;

(2) professional social work licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the board under chapter 467, Health and Safety Code;

(4) law-enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges against a holder of a license or order of recognition, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Occ. Code § 505.2545(h), (i) (emphasis added). You inform us that the submitted information was "gathered and/or created in response to a complaint and an investigation [that] occurred." After reviewing the information you submitted to this office as being responsive to the request, it appears that no disciplinary action resulted from the investigation of the complaint against the former social worker. We therefore conclude that the requested information is made confidential in its entirety pursuant to section 505.2545(h) of the Occupations Code. Furthermore, it appears that none of the exceptions to confidentiality

under section 505.2545(h) are applicable in this instance. The department therefore must withhold the requested information in its entirety pursuant to section 552.101 of the Government Code.

Although you request that this ruling serve as a "previous determination" for purposes of section 552.301(a) of the Government Code, we decline to issue such a ruling at this time. 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).

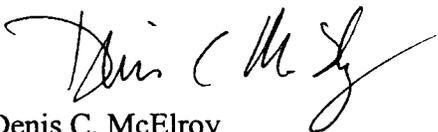
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/sdk

Ref: ID# 161772

Enc: Submitted documents

c: Mr. James Lindsey Shank
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(w/o enclosures)