



June 4, 2002

Ms. Susan K. Steeg
General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2002-3007

Dear Ms. Steeg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163853.

The Texas Department of Health (the "department") received a request for a list of attorneys who have received payment from the department for judicial approval cases authorized under the Parental Notification Act, chapter 33 of the Family Code. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. Chapter 33 of the Family Code provides for parental notification for minors seeking an abortion or judicial approval for minors to have an abortion without parental notification. Sections 33.003 and 33.004 outline the judicial approval procedures. Pursuant to section 33.003(k), all court documents pertaining to the proceedings are confidential and privileged and not subject to disclosure under the Public

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Information Act (the "Act"). Further, section 33.007 provides that a court acting under sections 33.003 and 33.004 may issue an order requiring the state to pay court costs as well as the cost of any appointed attorney ad litem and guardian ad litem. The order must be directed to the Comptroller of Public Accounts, who shall pay the ordered amount from funds appropriated to the department. *See* Fam. Code § 33.007(b).

The Texas Supreme Court has issued rules to ensure confidentiality during the judicial process under chapter 33. Rule 1.9(f) addresses confidentiality of the order awarding costs and provides as follows:

When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentiality. The confidentiality of an order awarding costs—as prescribed by Chapter 33, Family Code—is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, Texas Department of Health, and the Office of Court Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

Further, the Texas Supreme Court also states the following in Note and Comment 8 to the Texas Parental Notification Rules and Forms:

Because orders awarding costs contain information made confidential by Chapter 33, Family Code, that confidentiality should not be affected by the transmission to the Texas Department of Health and the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, or average amount per proceeding, or other such statistical summaries or analyses which do not impair the confidentiality of the proceedings.

The Texas Supreme Court has provided Form 2F as an example of the form and content of an order awarding costs in parental notification matters. The form styles the case name as "In Re Jane Doe" to protect the anonymity of the minor and includes the date, the cause number and the court, the names and addresses of the attorney ad litem, guardian ad litem, the court reporter, and the respective fees owed to these persons as well as the amount of court costs. In comment 8, the Texas Supreme Court states that the order awarding costs contains confidential information. Rule 1.9 states that chapter 33 of the Family Code

prescribes the confidentiality of the order awarding costs and that the confidentiality of this information is not affected by its transmission to the department. Because the identity of the minor is already protected in the court order, the Texas Supreme Court must consider the other information in the order to be confidential. The Texas Supreme Court has held that information identifying courts hearing parental notification proceedings is confidential. See *In re Jane Doe*, 19 S.W.3d 249 (Tex. 2000). Based on the guidance of the Texas Supreme Court in *In re Jane Doe* and the rules promulgated under chapter 33 of the Family Code, we determine that the Texas Supreme Court considers all the information in Form 2F to be confidential.

You inform us that the submitted documents consist in their entirety of information compiled from confidential court orders in parental notification proceedings. Upon review, we note that the submitted documents consist in their entirety of information found in Form 2F. Specifically, the submitted documents contain dates, cause numbers, information identifying courts, payment voucher numbers, amounts paid, and names of attorney payees for payments made for costs from parental notification proceedings. We agree that this information is confidential under sections 33.003(k), (l) and Texas Parental Notification Rule 1.9(f). Accordingly, we conclude that the department must withhold the submitted information pursuant to section 552.101 of the Government 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

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 163853

Enc: Submitted documents

c: Ms. Amy Dorsett
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(w/o enclosures)