



November 14, 2002

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

OR2002-6497

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# 172184.

The Texas Department of Human Services (the “department”) received two written requests from a department employee for records pertaining to an internal affairs investigation of the employee. You contend that the requested information is excepted from required disclosure pursuant to section 552.101 of the Government Code.¹

We note at the outset that the submitted records consist of information subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or *investigation* made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). The department must release the submitted information except to the extent it is expressly made confidential under other law. Because you contend that the submitted information is made confidential under other law, we will consider your claims.

¹Although you originally also raised section 552.108 of the Government Code with regard to the requested information, you have since withdrawn that argument.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the requested information is made confidential under section 12.003 of the Human Resource Code, which provides in relevant part:

(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) (emphasis added); *see also* Hum. Res. Code § 21.012(a); 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards restricting use and disclosure of client information); Open Records Decision Nos. 584 (1991), 166 (1977).

Section 12.003 makes confidential information relating to applicants for and recipients of public assistance. *See* Open Records Decision No. 584 at 3 (1991). Furthermore, this office has previously determined that except for purposes directly connected with the administration of the assistance programs administered by the department, section 12.003 forbids disclosure of the broadest range of client information, that is, "any information" about clients of assistance programs of the department, not just the clients' names and addresses. *See* Open Records Decision No. 584 (1991).

After reviewing the submitted information, we agree that a large portion of the submitted report is made confidential under section 12.003. However, several of the submitted documents, or portions thereof, do not consist of information pertaining to "persons applying for or receiving assistance" and thus are not made confidential under section 12.003. We have marked the information that is not made confidential that the department must release to the requestor.² The remaining information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resource Code.

²We note that although the records to be released in this instance contain information made confidential under sections 552.117 and 552.130 of the Government Code, the requestor has a special right of access to this information. *See* Gov't Code § 552.023. However, if the department receives a subsequent request for this information from a different individual, the department must request another decision from this office at that 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,

A handwritten signature in black ink that reads "Kristen Bates". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/lmt

Ref: ID# 172184

Enc: Submitted documents

c: Ms. Lisa Mendoza
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(w/o enclosures)