OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 9, 2003

Mr. William T. Buida
Supervising Attorney
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2003-0199

Dear Mr. Buida:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174804.

The Department of Human Services (the "department") received a written request for, among other things, all monitoring reports received from Kid-Care, Inc., since January 2001.[1] You contend that portions of the requested monitoring reports are made confidential under section 12.003 of Human Resources Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.[2]

You inform us, however, that the department did not possess the requested information at the time it received the records request. The Public Information Act (the "Act") does not require a governmental body to obtain information not in its possession or to prepare new information in response to a records request. *See Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 445 (1986); *see also* Attorney General Opinion JM-48 (1983) (governmental body not required to comply with standing request for information to be

[1]We assume the department has released the other information sought by the requestor. If it has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

[2]Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

collected or prepared in future). We therefore conclude that the Act does not require the department to comply with the current request.

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).

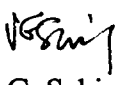
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/lmt

Ref: ID# 174804

Enc: Submitted documents

c: Mr. Wayne Dolcefino
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(w/o enclosures)