OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Mr. Tim Molina
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2003-2034

Dear Mr. Molina:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178473.

The Office of the Attorney General (the "OAG") received a request for a complete copy of the investigative file involving Bender Terrace Nursing Home. You claim that the requested information, which is maintained by the OAG's Medicaid Fraud Control Unit ("MFCU"), is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions claim and have reviewed the submitted sample information.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You contend that all of the requested information is confidential under section 242.127 of the Health and Safety Code. Section 242.127 provides, among other things, that a report, record, or other working paper used or developed in an investigation under subchapter E of chapter 242 is confidential and may only be disclosed for purposes consistent with the rules adopted by the Texas Board of Human Services or the designated agency. Health & Safety Code § 242.127.

[1]We assume that the "sample" records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You explain that the Texas Department of Human Services (the "department") is responsible for investigating reports of abuse and neglect of convalescent and nursing homes and related institutions. *See* Health & Safety Code § 242.126 (authorizing investigation of complaint of abuse or neglect by Texas Department of Human Services or designated agency). You further explain that, pursuant to federal law, MFCU is responsible for reviewing cases of abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan. *See* 42 U.S.C. § 1396. Based on the close relationship between MFCU and the department in investigating abuse and neglect cases under subchapter E of chapter 242, this office has previously determined that the confidentiality provision in section 242.127 extends to the reports, records, or working papers used or developed by MFCU in such investigations. In this instance, you state that the requested records were obtained from the department or were generated by MFCU in connection with an abuse investigation under subchapter E. We agree that the submitted information is subject to section 242.127. Because you have not advised us of any rules promulgated by the OAG permitting disclosure of the information at issue, we conclude that the requested information is confidential under section 242.127 and must, therefore, be withheld in its entirety under section 552.101 of the Government Code.[2]

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

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[2]Because we are able to make a determination under section 552.101, we need not address the applicability of your other claimed exceptions to disclosure.

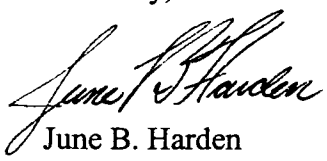
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 178473

Enc: Submitted documents

c: Mr. Warlick Carr
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(w/o enclosures)