



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 2, 2003

Mr. Donald Jansky
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2003-2240

Dear Mr. Jansky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178901.

The Texas Department of Health ("TDH") received a request for the following four categories of information:

1. Copies of the complaint made by or on the behalf of James Garrett and any and all notes by TDH employees related to the initiation of an investigation of a Dallas Fire Rescue Department (DFRD) response on June 6, 2002 that involved James Garrett.
2. Any and all statements from witnesses, the complainant, and personnel who responded to the above-referenced request for service.
3. Any and all videotapes made by TDH of any witness, the complainant, and personnel who responded to the request for service for James Garrett.
4. Copies of medical records generated by Baylor Hospital Emergency Room concerning treatment received by James Garrett on June 6, 2002.

You assert the requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Initially, we address your acknowledgment of TDH's obligations under section 552.301 of the Government Code. According to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). In this case, you state TDH received the request for information on October 21, 2002. You should have submitted your request for an attorney general opinion no later than November 4, 2002. TDH should have forwarded all other required documentation to this office by November 12, 2002. We received your letter requesting an opinion from our office on January 30, 2003 and your supporting documentation on January 31, 2003. Therefore, we find that you did not request a ruling from this office or submit the required information within the prescribed periods. Consequently, we conclude TDH failed to comply with the requirements of subsections 552.301(b) and 552.301(e) of the Government Code.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public unless it demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or the information impacts third party interests. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code qualifies as a compelling reason to overcome the presumption of openness, we will address your arguments despite TDH's failure to comply with section 552.301 of the Government Code.

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. Section 773.0612(a) of the Health and Safety Code provides that TDH "is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel

to the extent necessary to enforce this chapter and the rules adopted under this chapter.” Section 773.0612(b) of the Health and Safety Code provides that “[a] report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the board.” You state TDH used or developed the submitted information in an investigation under section 773.0612 of the Health and Safety Code. Based on your representation and our review of the information, we conclude all of the submitted information is confidential under section 773.0612(b). Accordingly, TDH must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 773.0612(b) of the Health and Safety 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 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 178901

Enc: Submitted documents

c: Mr. Charles S. Black, Jr.
Assistant City Attorney
City of Dallas
1500 Marilla
Dallas, Texas 75201
(w/o enclosures)