



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 17, 2003

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2003-2594

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179572.

The Health and Human Services Commission (the "commission") received a request for a copy of the document submitted by the Texas Department of Health (the "department") to the commission relating to the department's budget reductions for fiscal years 2003, 2004, and 2005. You state that since the department only submitted information for fiscal year 2003, the commission does not have information responsive to the request for fiscal years 2004 and 2005. You claim that the information for fiscal year 2003 is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

We note that the submitted documents are subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant 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:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

Gov't Code § 552.022(a)(5). You explain that the governor, lieutenant governor, and speaker of the house requested that all state agencies develop recommendations identifying potential budget cuts. You further explain that the request directed agencies under the jurisdiction of the commission, which includes the department, to work with the commission to present a unified budget plan. You indicate that the requested documents were used in the preparation of the commission's Unified Budget Reduction Plan. Since the commission submitted its budget reduction plan on February 6, 2003, the estimate of the need for or expenditure of public funds is complete. Thus, all working papers related to the estimate are subject to section 552.022(a)(5) of the Government Code.

Because section 552.022(a)(5) applies to the requested budget-related information, release is mandatory "unless [the information is] expressly confidential under other law." *Id.* § 552.022(a). You argue that the requested information is excepted from disclosure under section 552.111; however, discretionary exceptions are insufficient to make information confidential for purposes of section 552.022(a). *See, e.g., In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (stating that discretionary exceptions are not "other law" for purposes of Gov't Code § 552.022); Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure). Accordingly, the submitted information must be released since it is deemed public under section 552.022(a)(5) and is not expressly confidential under other law.

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

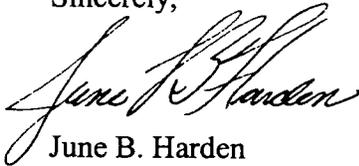
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID#

Enc: Submitted documents

c: Ms. Tabitha Martin
c/o Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711
(w/o enclosures)