



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 27, 2003

Ms. Moira Parro  
Assistant District Attorney  
Dallas County  
411 Elm Street, Suite 500  
Dallas, Texas 75202-3384

OR2003-3547

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181644.

Dallas County Health and Human Services (the "county") received a request for "a list of the current members of the Hutchins Senior Center, including their residence addresses, mailing addresses and telephone numbers." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You argue that section 270.1 of title 40 of the Texas Administrative Code makes the submitted information confidential. Section 270.1 provides in pertinent part as follows:

(b) Scope. These rules apply to all services provided under contract funded in whole or in part with funds provided by the Department under the Older Americans Act, as amended, or State general revenue, other funding source granted or contracted to the Department for use in providing services, or other funds pooled with such funds to meet the costs for services under the Older Americans Act.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

...

(d) Confidentiality of Client Records. Contractors shall ensure through contractual requirements that subcontractors protect client information records, according to the following minimum requirements:

(1) no information about a client, or obtained from a client by the service provider or the contractor is disclosed by the service provider or contractor in a form that identifies the person without the informed consent of the person or of his legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or the contractor as the local monitoring agency;

(2) only authorized personnel of the Department, the contractor or the service provider shall have access to confidential client information records;

(3) confidential client records must be maintained in a secure, locked facility when not in use by authorized personnel; access to client information maintained in computer equipment must be limited through accepted computer security practices, including, but not limited to, password protections;

(4) subcontractors and contractors are not required to disclose those types of information or documents that are exempt from disclosure under the Federal Freedom of Information Act, as amended . . . .

40 T.A.C. § 270.1

The Legislature enacted<sup>2</sup> certain provisions enabling the Texas Department of Aging (the "department") to continue the receipt of funds available to states through the Older Americans Act's provisions for grants to state and community programs on aging. 42 U.S.C.A. §§ 3021 *et seq.*; Hum. Res. Code §§ 101.001 *et seq.* Prior to the receipt of federal funding for the department, it was necessary for the State of Texas to provide a written assurance to the federal government that the funds would be expended in accordance with federal objectives and in compliance with federal regulations. Accordingly, the department submitted a state plan to the Commissioner on Aging at the federal Department of Health and

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<sup>2</sup>The Texas Constitution was amended in order to grant state aid to needy aged persons. Tex. Const. art. III, § 51-a. The amendment allowed Texas to enter into federal-state cooperative agreements to provide for the payment of assistance to the elderly, among other services. Tex. Const. art. III, § 51-a interpret. commentary (Vernon 1962).

Human Services. *1993-1995 STATE PLAN, The Texas Department on Aging*, (January 29, 1993). The plan was approved. The Texas Plan, under its verification of intent and standard assurances, certifies that the administration of the State Plan shall be in compliance with the required assurances and provisions of the Older Americans Act of 1965 (the "Act"), as amended. *Id.* at 1. It assures the federal government that each area agency engages only in activities which are consistent with its statutory mission as prescribed in the Act and as specified in state policies under title 45, section 1321.11 of the Code of Federal Regulations. *Id.* at 5.

The federal regulation requires that the department develop policies governing all aspects of programs operated. 45 C.F.R. §1321.11. The department is responsible for enforcement of these policies. 45 C.F.R. §1321.11.

One provision deals specifically with the confidentiality concern at issue in this open record request. 45 C.F.R. §1321.51. Specifically, section 1321.51 provides that:

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State or local monitoring agencies.

The department incorporated this particular provision into section 270.1(d) of title 40 of the Texas Administrative Code in accordance with its responsibility under section 1321.11 of title 45 of the Code of Federal Regulations to develop policies governing all aspects of programs operated, whether operated directly by the department or under contract.

The need for compliance with the methods of administration required by federal regulation was noted in an opinion from the Attorney General's office. Attorney General Opinion MW-142 (1980). That opinion dealt with the department's predecessor, the Governor's Committee on Aging. Specifically, it noted that whenever the federal government finds a state has failed to comply substantially with any provision of the Older Americans Act in the administration of the state plan, the secretary has the authority to stop federal funds, after notice and an opportunity for the state to be heard. *Id.* That decision also notes that the performance of the department's services must be consistent with federal regulations in order to avoid interruption of federal funds. *Id.* at 2.

You inform us that the Senior Service Center is a "provider" of the services described in section 270.1(b) of title 40 of the Administrative Code. Furthermore, you do not inform us

that any person has consented to the disclosure of the requested information. We therefore agree that the county must withhold the requested information under section 552.101 of the Government Code in conjunction with section 270.1 of title 40 of the Texas Administrative Code. Access to this information can only be provided with the informed consent of the person or of his or her legal representative, court order, or program monitoring.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/sdk

Ref: ID# 181644

Enc. Submitted documents

c: Mr. Michael Cook  
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(w/o enclosures)