



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 17, 2003

Mr. Thomas F. Best  
General Counsel  
Texas Commission on Alcohol and Drug Abuse  
P.O. Box 80529  
Austin, Texas 78708-0529

OR2003-4169

Dear Mr. Best:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182914.

The Texas Commission on Alcohol and Drug Abuse (the "commission") received a request for certain information relating to Sundown Ranch, Inc. for the period of November 1, 2000 through November 30, 2002. You advise that the commission will release some of the requested information, but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We first note that some of the submitted documents do not correspond to the time interval specified in the request for information. We therefore find that this information is not responsive to the request. This decision does not address your claimed exception to the disclosure of the non-responsive information, which the commission need not release. We have marked this information accordingly.

Next, we address your claim under section 552.101 of the Government Code with regard to the submitted responsive information. 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 464.010 of the Health and Safety Code requires that a facility providing alcohol and drug abuse treatment shall report alleged abuse or neglect of a client of the facility to the commission. Section 464.010(e) provides:

(e) All records made by the commission during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

- (1) on court order;
- (2) on written request and consent of the person under investigation or that person's authorized attorney; or
- (3) as provided by Section 464.011.

Under section 464.011, the commission may make its licensing and investigatory records that identify a client available to state or federal law enforcement authorities on request and for official purposes. Health & Safety Code § 464.011. In this case, you advise that the commission received complaints that the facility at issue had abused or neglected clients of the facility. You indicate that the submitted documents pertain to the investigation of these complaints. Based on your representations and our review, we determine that the submitted responsive documents are within the scope of section 464.010(e), and that none of the release provisions found in sections 464.010 and 464.011 are applicable here. Further, we do not find that section 464.010 allows for the release of such information after an investigation has been closed. Consequently, we conclude that the commission must withhold the submitted responsive information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 464.010(e) of the Health and Safety Code.

The commission requests that this office issue a previous determination allowing it to withhold from public disclosure information regarding its investigations into alleged abuse and/or neglect at alcohol and drug abuse treatment facilities licensed by the commission. After considering your request, we have decided that this letter ruling shall serve as a previous determination under section 552.301(a) that records made by the commission during its investigation of alleged abuse or neglect in an alcohol and drug abuse treatment facility licensed by the commission are excepted from disclosure under section 552.101 of the Government Code, unless release is authorized by section 464.010 or 464.011 of the Health and Safety Code. *See Gov't Code § 552.301(a), (f); see also Open Records Decision No. 673 (2001).* Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information requested of the commission. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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

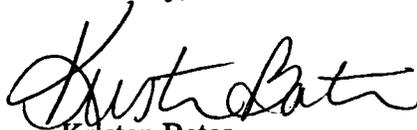
things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 182914

Enc. Submitted documents

c: Ms. Sherri Payne  
Tracy & Carboy  
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Dallas, Texas 75231  
(w/o enclosures)