



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2003

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

OR2003-6212

Dear Mr. Aragon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187140.

The Texas Health and Human Services Commission (the "commission") received four requests for information related to the investigation of a named doctor, clinic, pharmacy, pharmacist, and health care entity. You state that you have released some responsive information.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have also forwarded these requests to the Dallas County District Attorney's Office (the "DA"). The DA has also submitted briefing explaining its objection to the release of the requested information under sections 552.103 and 552.108 of the Government Code. Both the commission and the DA have submitted representative samples of the requested information.<sup>2</sup> We have considered all of the submitted arguments and reviewed the submitted information.

Initially, we note that you inform us that the commission has released certain information to two of the requestors. We note that section 552.007 of the Government Code prohibits a governmental body from selectively disclosing information that is not confidential by law. *See Gov't Code § 552.007; but see Gov't Code § 552.352* (imposing criminal penalties for

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<sup>1</sup>We note that you have requested a withdrawal regarding one of the requests for information because such information has already been released. This ruling therefore does not address information for which you do not seek a decision.

<sup>2</sup>We assume that the 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.

release of confidential information). You do not claim that the information you have already released is confidential by law. Thus, to the extent that portions of the requested information have previously been released, the commission must release that information to the extent it is responsive to any of the remaining requests.

Next, we will address your argument under section 552.108 of the Government Code. This section excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). An agency whose function is essentially regulatory in nature is not a “law enforcement agency” for purposes of section 552.108. *See* Open Records Decision No. 199 (1978) (predecessor statute). However, a non-law-enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and has been or will be forwarded to an appropriate law enforcement agency for investigation. *See* Attorney General Opinion MW-575 (1982), Open Records Decision No. 493 (1988); *see also* Open Records Decision No. 372 (1983). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Furthermore, where an incident involving allegedly criminal conduct is under active investigation or prosecution, section 552.108(a)(1) may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under statutory predecessor to section 552.108).

As noted above, you have notified the DA of the present requests for information, and the DA has submitted briefing and information to this office. The DA states that it has requested and received information related to the commission’s investigation of the named individual and entities. Furthermore, the DA is currently investigating the alleged incidents related to the named individual and entities, and states that “[i]nformation contained within [the files sent to the DA by the commission] [are] inextricably related to the criminal offenses currently under investigation.” The DA asserts that “the public release of the identified [commission] investigation files would interfere with [the DA’s] ability to investigate and prosecute crime[,] . . . [and] would severely compromise [the DA’s] ability to gather and safeguard evidence related to one or more criminal offenses.” Based on these representations and our review of the submitted information, we agree that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. Accordingly, the commission may withhold most of the submitted records pursuant to section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases), *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law

enforcement exception may be invoked by any proper custodian of information which relates to incident). As our ruling on this issue is dispositive, we need not address the remaining arguments.

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/lmt

Ref: ID# 187140

Enc. Submitted documents

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