



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2003

Ms. Cynthia Villarreal-Reyna
Texas Department of Insurance
Legal and Compliance Division, Mail Code 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2003-8870

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192492.

The Texas Department of Insurance (the "department") received a request for several categories of information related to the State Fire Marshal's Office. You advise that some of the requested information will be provided to the requestor. However, you 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information made confidential by other statutes. Section 651.007 of the Government Code reads in part as follows:

(b) Each state agency shall conduct an exit interview with an employee who leaves employment with the agency. The state agency shall conduct the exit interview by having the employee access the questionnaire posted on the state auditor's Internet site and electronically submit the completed questionnaire to the state auditor.

(c) The state agency shall conduct the exit interview in a manner that allows the employee alone to describe the employee's reason for leaving employment. The state agency may not alter the description stated by the employee. The state agency may not have access to the questionnaire unless it is provided by the employee under Subsection (b).

(d) Subject to Subsection (j), the state auditor shall develop the exit interview questionnaire. In developing the questionnaire under this subsection, the state auditor shall consult with the comptroller and representatives designated by the comptroller from small, medium, and large state agencies.

(e) Not later than the 15th day following the end of the calendar quarter, the state auditor shall submit, subject to Subsection (j), a report to each state agency containing the responses to the exit interview questionnaire submitted by each former employee of the agency during the preceding quarter. The state auditor's report may not contain the name of an employee or any other information identifying the employee.

(f) A state agency may not share the responses to an exit interview questionnaire with another state agency.

(g) The responses to an exit interview questionnaire are confidential and not subject to disclosure under Chapter 552. The responses may be disclosed only to a law enforcement agency in a criminal investigation or on order of a court.

....

Gov't Code §§ 651.007(b)-(g). The submitted information consists of exit interview questionnaires completed by department employees who were leaving their employment. However, these questionnaires are apparently internal documents generated by the department, rather than questionnaires from the state auditor's internet site to be electronically submitted to the state auditor. Therefore, we find that section 651.007 of the Government Code is inapplicable to the submitted information. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Accordingly the submitted information is not made confidential by section 651.007(g), and may not be withheld from disclosure under section 552.101 of the Government Code. It must be released.

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).

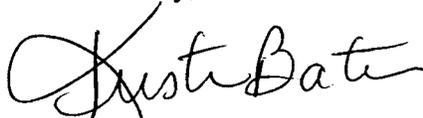
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 192492

Enc. Submitted documents

c: Bays Beck
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(w/o enclosures)