ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2004

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2004-4802

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203295.

The Texas Department of Public Safety (the "department") received a request for any documentation received questioning the requestor's ability to safely operate a motor vehicle. 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 information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 12.097 of the Health and Safety Code provides as follows:

> (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:
>
> > (1) are for the confidential use of the medical advisory board [of the Texas Health Department], a panel, or the Department of Public Safety of the State of Texas;
> >
> > (2) are privileged information; and

> (3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).
>
> (b) In a subsequent proceeding under Subchapter N, Chapter 521, Transportation Code,[1] the medical standards division [of the Texas Department of Health] may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:
>
> (1) the Department of Public Safety of the State of Texas;
>
> (2) the applicant or license holder; and
>
> (3) the officer who presides at the hearing.

Health & Safety Code § 12.097 (footnote in original); *see also* Health & Safety Code §§ 12.092(b) (providing for appointment of medical advisory board to assist department in determining whether driver's license applicant or license holder is capable of safely operating motor vehicle), 12.095 (providing for medical advisory board opinion or recommendation to department). You advise that the submitted information is a record or report relating to the medical condition of an applicant or license holder. Based on your representation and our review, we determine that the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 12.097(a) of the Health and Safety Code.[2] Based on this finding, we do not reach your remaining arguments against disclosure.

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.

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[1] V.T.C.A., Transportation Code § 521.291 *et seq.*

[2] We note that, as the license holder, the requestor may be able to obtain the requested information from the Department of Health's medical standards unit in a subsequent proceeding under subchapter N, chapter 521, Transportation Code. *See* Health & Safety Code § 12.097(b).

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).

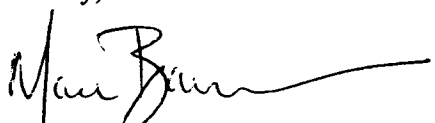
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 203295

Enc. Submitted documents

c: Ms. Judith Marie Davis
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Austin, Texas 78745
(w/o enclosures)