



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2005

Mr. Michael Greenberg
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2005-04860

Dear Mr. Greenberg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225433.

The Texas Department of State Health Services (the "department") received a request for information concerning a specified investigation into research practices and alleged improprieties related to the University of Texas Southwestern Medical Center's Community Prevention and Intervention Unit (the "university"), including information reflecting any disciplinary actions taken or criminal charges filed as a result of the investigation and a copy of the final report issued as a result of the investigation. 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 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, including section 161.0213 of the Health and Safety Code. Section 161.0213 provides as follows:

Reports, records, and information furnished to the commissioner [of public health] or the commissioner's designee or the Texas Natural Resource Conservation Commission that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental

exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

You state that the submitted information “relate[s] to and arise[s] from a study being conducted by [the university] for [the department] under contract” and that the study is “an epidemiologic investigation of human illness, HIV, which is harmful to the public health[.]” See Health & Safety Code § 161.0211 (providing that department shall conduct epidemiologic or toxicologic investigations of illnesses or conditions and of environmental exposures believed to be harmful to public health). Based on these representations and our review of the submitted information, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 161.0213 of the Health and Safety Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 225433

Enc. Submitted documents

c: Mr. David Webb
Dallas Voice
4145 Travis, Third Floor
Dallas, Texas 75204
(w/o enclosures)