



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2005

Ms. Sylvia F. Hardman
Texas Department of Rehabilitative Services
Office of the General Counsel
4800 North Lamar Boulevard, Suite 300
Austin, Texas 78756

OR2005-06580

Dear Ms. Hardman:

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# 228571.

The Texas Department of Rehabilitative Services (the "department") received a request for "every DARS DDS 'POMS Procedural Memorandum' . . . since May 1999," and other specified documents. You state that the department does not have some of the requested information.¹ You also state that some of the requested information has been provided to the requestor, but claim that some of the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information is confidential under federal law relating to the disability insurance program of the Social Security Administration (the "administration"). The determination of whether an individual is under a disability for purposes of the Social Security Act, chapter 7 of title 42 of the United States Code, is determined by "a State Agency." 42 U.S.C. § 421(a). The department's Disability Determination Services (the "DDS") is the Texas state agency responsible for making these disability determinations.

A disability determination under the Social Security Act must be made "in accordance with the pertinent provisions of [subchapter II of chapter 7] and the standards and criteria contained in regulations or other written guidelines of the Commission of Social Security."

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Id. § 421(b). The Commissioner of Social Security must also “promulgate regulations specifying . . . performance standards and administrative requirements and procedures to be followed in performing the disability determination function.” *Id.*; 20 C.F.R. § 404.1633(a) (“We will provide the State agency with written guidelines necessary for it to carry out its responsibilities in performing the disability determination function.”). Pursuant to these obligations, the administration promulgates the Program Operations Manual System (the “POMS”), which is a primary source of information used by social security employees and state agencies to process claims for social security benefits. The POMS contains internal data entry and sensitive content instructions that the administration provides only to its employees and state agencies making disability determinations.

You inform us that, to supplement the POMS, the DDS issues POMS Procedural Memoranda (“PPMs”), and that these PPMs “provide additional instruction to DDS employees to assist them in properly applying the information found in specific sections of the POMS.” You state that the information at issue consists of PPMs that “reference internal data entry instructions located in the sensitive, non-public portions of the POMS.” You also state that that one PPM “discusses entire [administration] query applications that are described in three non-public chapters in Part 8 of the POMS” and that these portions of the chapter are labeled “SENSITIVE - NOT TO BE SHARED WITH THE PUBLIC” by the administration. Thus, you argue that this information is confidential under federal law and must accordingly be withheld under section 552.101 of the Government Code.

You assert that a state agency receiving information and records from the administration must “comply with the confidentiality of information, including the security of systems, and records requirements described in 20 CFR part 401 and pertinent written guidelines.” 20 C.F.R. § 404.1631. After review of your arguments and the information at issue, we agree that federal regulations govern the disclosure of the requested information. *Cf.* Open Records Decision No. 599 (1991) (Texas Employment Commission must follow federal regulations governing disclosure of wage information). Therefore, under section 404.1631 of the federal regulations, the department must release or withhold the information at issue in accordance with the records requirements of pertinent federal law and the administration’s written guidelines for the confidentiality of information specifying performance standards and administrative requirements and procedures to be followed in performing the disability determination function under the Social Security Act.

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).

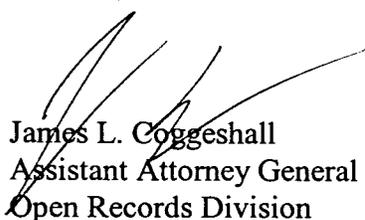
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 228571

Enc. Submitted documents

c: Ms. Laurie L. York
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(w/o enclosures)