



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

February 3, 2006

Mr. Steven Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
P. O. Box 13247  
Austin, Texas 78751

OR2006-01158

Dear Mr. Aragon:

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# 241588.

The Texas Health and Human Services Commission (the "commission") received a request for the complete records regarding a complaint filed by the requestor. You state that you will release most of the requested information. As to the remaining requested information, however, you make no arguments and take no position as to whether it is excepted from disclosure. You, instead, indicate that you have notified the Texas Department of Aging and Disability Services (the "department"), an interested third party, of the request and its right to submit arguments to this office as to why the information should not be released. We have reviewed the submitted information. We have also considered comments submitted by the department. *See Gov't Code § 552.304* (providing that any person may submit comments stating why information should or should not be released).

We note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The commission states that the submitted information is part of the completed investigation of the requestor's complaint. Therefore, as prescribed by section 552.022, the commission must release the submitted information unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. The department claims that this information is excepted by section 552.122 of the Government Code. However, section 552.122 is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.122 does not qualify as other law that makes information confidential. Thus, the commission may not withhold any of the submitted information under section 552.122 of the Government Code. As neither the commission nor the department raises any other exceptions against disclosure, the commission must release the submitted information.

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); *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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 241588

Enc. Submitted documents

c: Peggy Roll  
Department of Aging and Disability Services  
701 W. 51<sup>st</sup> St.  
Austin, TX 78751

Teresa Lowry  
5210 Kingston Ct.  
Abilene, TX 79605  
(w/o enclosures)