



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2007

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2007-12047

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 289833.

The Office of the Attorney General (the "OAG") received a request for documents regarding John M. Turner or Disability Services of the Southwest, Inc. The OAG has released some information, including documents filed with a court. The OAG claims Exhibit B is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹ We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments concerning availability of requested information).

First, the requestor asserts the OAG failed to comply with section 552.301(d)(1) of the Government Code. Section 552.301(d)(1) requires a governmental body that requests an attorney general decision to withhold information to provide the requestor, within ten business days of receipt of the request for information, a written statement that it has asked for an attorney general decision. *Id.* § 552.301(d)(1). The OAG received the request on

¹We assume that the sample records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

July 3, 2007. The tenth business day after July 3 is July 19, 2007 because the OAG was closed on July 4 and July 5 is not considered a business day as the OAG observed it as a skeleton day. The requestor states the OAG “asked for the exception ruling on July 25, 2007.” This is incorrect. The OAG sought a decision from this office on July 19, 2007. Its July 25, 2007 brief was a supplement submitted in compliance with section 552.301(e) of the Government Code. *See id.* § 552.301(e) (fifteen business days after receipt of request for information, agency must submit its arguments and information requested). The requestor does not state if and when he received the OAG’s July 19, 2007 letter. However, the OAG’s letter shows the OAG sent a copy to the requestor. Thus, we find the OAG fully complied with section 552.301.

Next, the OAG asserts section 552.108 excepts Exhibit B from public disclosure. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” *Id.* § 552.108(a)(1). Section 552.108 applies only to records of a law enforcement agency or prosecutor. The records at issue are records of the OAG’s Medicaid Fraud Control Unit (the “MFCU”). The requestor argues the MFCU is not a law enforcement agency. A law enforcement agency is one whose primary function is to investigate crimes and enforce criminal laws. Open Records Decision Nos. 493 at 2 (1988), 287 at 2 (1981). The OAG explains the MFCU is

charged under federal law with conducting “a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan[,]” and with reviewing “abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan” *See* 42 C.F.R. 1007, authorized by 42 U.S.C. 1396.

Furthermore, the MFCU enforces criminal penalties. Because the MFCU’s primary function is to investigate and enforce criminal laws, we conclude that the MFCU is a law enforcement agency under section 552.108.

The requestor also argues the requested records are not excepted under section 552.108 because they are not “created” by a law enforcement agency. Section 552.108 does not require the law enforcement agency to create the records; it applies to “[i]nformation held by a law enforcement agency.” Gov’t Code § 552.108(a).

Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the OAG explains Exhibit B relates to an ongoing criminal investigation being conducted by

the MFCU. The OAG also states release of these records will compromise the investigation of this matter. Based on these representations and our review of the records, we agree the OAG may withhold Exhibit B under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).²

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).

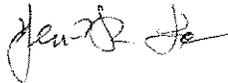
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

²Because section 552.108 is dispositive, we do not address the OAG's section 552.103 assertion.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 289833

Enc: Submitted documents

c: Mr. Mark S. Kennedy
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Dallas, Texas 75243
(w/o enclosures)