



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2008

Mr. Roy DeFriend
County/District Attorney
Limestone County
Limestone County Courthouse
200 West State Street, Suite 110
Groesbeck, Texas 76642

OR2008-05863

Dear Mr. DeFriend:

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# 308901.

The Limestone County District Attorney's Office (the "district attorney") received a request for all complaints pertaining to a specified nursing facility from January 1, 2004 to the present. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 242.127 of the Health and Safety Code, which pertains to investigations of alleged

¹We assume that the "representative sample" of records submitted to this office is 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.

or suspected abuse or neglect in convalescent or nursing homes and related facilities. Section 242.127 provides in pertinent part:

A report, record, or working paper used or developed in an investigation made under [subchapter E of chapter 242] . . . [is] confidential and may be disclosed only for purposes consistent with the rules adopted by the [Texas Board of Human Services] or the designated agency.

Health & Safety Code § 242.127. The only entities authorized to conduct an investigation under subchapter E of chapter 242 are the Texas Department of Human Services (“DHS”) or the agency designated by a court to be responsible for the protection of a nursing home resident who is the subject of a report of abuse or neglect. *See id.* § 242.126; *see also id.* § 242.121 (defining “designated agency”). The requested documents consist of the final written reports completed by DHS concerning alleged abuse at the specified nursing facility. DHS submitted the final written reports to the district attorney pursuant to section 242.126(k) of the Health and Safety Code. *See id.* § 242.126(k) (DHS shall make complete final written report and submit report to district attorney). Accordingly, we agree that the requested information is confidential under section 242.127 of the Health and Safety Code and must be withheld under section 552.101 of the Government 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 308901

Enc. Submitted documents

c: Ms. Marion S. Rosen
Marion S. Rosen & Associates
5065 Westheimer, Suite 840
Houston, Texas 77056
(w/o enclosures)