



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2008

Mr. Paul A. Lamp
Feldman & Rogers
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2008-07532

Dear Mr. Lamp:

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# 311673.

The Pasadena Independent School District (the "district"), which you represent, received a request for any information pertaining to medical claims related to the requestor. You state that you have provided the requestor with some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the arguments you make and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit written comments concerning availability of requested information).

Initially, we address the requestor's assertion that the district failed to meet its procedural obligations under the Act. Specifically, the requestor asserts that she made a prior request for the information at issue on February 21, 2008, and that the district failed to either provide the requested information or submit the request to this office for a decision within the required ten business days. *See Gov't Code* § 552.301(b) (a governmental body must ask

¹ Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See Gov't Code* § 552.022. Furthermore, we note that you raise section 552.101 of the Government Code in conjunction with the Texas Rules of Evidence and the Texas Rules of Civil Procedure. This office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. We note that, in this instance, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 is section 552.107. *See Open Records Decision Nos. 677 (2002), 676 at 6*.

for a decision from this office and state the exceptions that apply within ten business days of receiving the written request). You assert that the submitted information is not responsive to the prior request which asks for “[a]ll media related to medical claims for [the requestor] for 2006 to present.” We note that a governmental body must make a good-faith effort to relate a request for information to responsive information that is within the governmental body’s possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). The documents at issue relate to the requestor’s medical claims. Therefore, we conclude these documents are responsive to the prior request. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise section 552.107 of the Government Code, this is a discretionary exception to public disclosure that protects the governmental body’s interest and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, we conclude that the district may not withhold any of the submitted information under section 552.107 of the Government Code. As you raise no other arguments against disclosure, the information must be released.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/mcf

Ref: ID# 311673

Enc. Submitted documents

c: Ms. Tana L. Haass
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(w/o enclosures)