



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2009

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

OR2009-04179

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# 338554.

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for the supporting paperwork it used to determine payments have been made to a particular company for each claimant considered "paid."¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

First, we must address the department's procedural obligations under section 552.301 of the Government Code. You state the department received the request for information on December 22, 2008. On January 7, 2009, you sent the requestor an itemized statement of

¹We note the requestor specifically excluded from his request any social security numbers. Thus, any social security numbers within the submitted information are not responsive to the present request for information and the department need not release this information to the requestor in response to his request.

²We assume 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.

estimated charges, and informed the requestor the department required full payment of the estimated cost of processing the request. Section 552.263(a) provides in relevant part that a governmental body "may require a deposit or bond for payment of anticipated costs . . . if [the governmental body] has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge" is estimated to exceed \$100. Gov't Code § 552.263(a). Pursuant to section 552.263 of the Government Code, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs. *See id.* § 552.263(e). However, a governmental body may require a deposit or bond only if it has provided the requestor with the required written itemized statement. The requirements of the written itemized statement referred to in section 552.263 are found in section 552.2165 of the Government Code.

Section 552.2615 requires a governmental body to provide a requestor with an estimate of charges when a request to inspect a paper record will result in the imposition of a charge that will exceed forty dollars. *See id.* § 552.2615. Under section 552.2615, a governmental body is required to inform the requestor of the duties imposed on him by this section and provide the requestor the information needed to respond. *Id.* Section 552.2615 of the Government Code provides in part:

(b) A request . . . is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 days after the date the statement is sent to the requestor that:

- (1) the requestor will accept the estimated charges;
- (2) the requestor is modifying the request in response to the itemized statement; or
- (3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of public information.

Id. § 552.2615(b). We have examined the cost estimate the department provided to the requestor and conclude the department did not inform the requestor he could respond to the itemized statement by informing the department he had sent a cost complaint to the attorney general. *Id.* § 552.2615(b)(3). We therefore find the department failed to meet the requirements of section 552.2615 in providing the required written itemized statement. Because the required written itemized statement was defective, the department may not require a deposit or bond from the requestor. Thus, for purposes of subchapter G, the department is considered to have received the request for information on December 22, 2008. Furthermore, the provision of an itemized estimate of charges to a requestor under

section 552.2615 does not excuse a governmental body from complying with its deadlines under section 552.301. *Id.* § 552.2615(g) (deadlines imposed by section 552.2615 do not affect application of time deadline imposed on governmental body under subchapter G of the Government Code).

Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You state the department received the original request for information on December 22, 2008. However, you did not request a ruling from this office until January 23, 2009. Furthermore, you did not submit the requested information or arguments stating why your claimed exceptions would apply until January 30, 2009. Consequently, we find the department failed to comply with the procedural requirements of section 552.301 in requesting this decision from our office.

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 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim an exception to disclosure under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (governmental body may waive section 552.103). Thus, your claim under section 552.103 does not provide a compelling reason for non-disclosure, and the department may not withhold the submitted information under this exception. Additionally, the department claims section 552.101 of the Government Code as an exception to disclosure. Because this exception can provide a compelling reason for overcoming the presumption of openness, we will consider the department's arguments under section 552.101.

You assert the submitted information reflects services rendered to social security claimants and is confidential under federal law governing the Social Security Administration's (the "administration") disability insurance program. 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. As such, section 404.2122 of title 20 of the Code of Federal Regulations requires the DDS to "comply with the provisions for 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. § 404.2122. Sections 401.100 to 401.200 set out the regulations that apply to the disclosure of information about an individual contained in the administration's program records. *Id.* § 401.20(b)(1); *see also id.* §§ 401.100 - .200.

After review of your arguments and the information at issue, we agree these federal regulations govern the disclosure of the requested information. *Cf.* Open Records Decision No. 599 (1991) (Texas Employment Commission and requesting agencies must comply with complex measures set out in federal regulations to protect wage information). Thus, under section 404.2122 of the Code of Federal Regulations, the department must comply with the disclosure provisions of part 401 governing the confidentiality of disability claimant information. *Id.* § 404.2122.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 338554

Enc. Submitted documents

c: Requestor
(w/o enclosures)