



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

Mr. Michael Garbarino
Director, Policy and Outreach
Office of Inspector General
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2010-15926

Dear Mr. Garbarino:

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# 397338 (OR-20100729-5296).

The Texas Health and Human Services Commission (the "commission") received a request for four categories of information relating to the commission's Office of Inspector General audit of pharmacy compliance with a specified program.¹ You state you have released some information to the requestor. You claim a portion of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim.

We must address the commission's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments

¹You provide documentation showing the commission sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W. 3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us the commission received this request on July 29, 2010. The commission sought and received clarification on August 10, 2010. *See id.* § 552.222. Thus, the commission's fifteen-business-day deadline under section 552.301(e) was August 31, 2010. *See City of Dallas* at 387. As of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the commission 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 requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code as an exception to disclosure of the requested information, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it generally does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the requested information may not be withheld under section 552.108. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under section 552.101 or section 552.114 of the Government Code. Therefore, we have no choice but to order the commission to release the requested information to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, written over a horizontal line.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 397338

Enc. Submitted documents

c: Requestor
(w/o enclosures)