



April 4, 2001

Mr. William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2001-1364

Dear Mr. Kuntz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145649.

The Texas Department of Licensing and Regulation (the "department") received a written request for information pertaining to four staff leasing companies.¹ You indicate that the department intends to make some responsive information available to the requestor. You contend, however, that other requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.

You have made no argument that the requested information is excepted from public disclosure pursuant to section 552.110. Nor has this office received any comments from the four referenced companies as to why any of the information at issue is excepted from public disclosure. *See* Gov't Code § 552.305(d) (governmental body shall make good faith effort to notify interested third parties regarding requests for those parties' information). Consequently, this office has no basis on which to conclude that any portion of the records

¹The written request is in the form of a subpoena duces tecum. However, because the requestor in his cover letter to the department states that he is also requesting the information under the "Texas Open Records Act," we will address whether the department is required to release the requested information pursuant to chapter 552 of the Government Code. Please note that this ruling does not affect the department's responsibility to respond to or comply with the subpoena. The appropriate forum to determine whether the information must be released pursuant to the subpoena is the authority that issued the subpoena. *See* Gov't Code § 552.0055.

at issue is excepted from required public disclosure pursuant to section 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, we conclude no portion of the requested information may be withheld under section 552.110 of the Government Code.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision.” (Emphasis added.) You contend that three statutes, sections 91.014 and 301.081 of the Labor Code, and section 411.083 of the Government Code, make the requested information confidential. Section 91.014 of the Labor Code governs certain records held by the department and provides in pertinent part as follows:

(a) An applicant for an original or renewal license must demonstrate a net worth as follows

. . . .

(d) A document submitted to establish net worth must show the net worth on a date not earlier than nine months before the date on which the application is submitted. A document submitted to establish net worth must be prepared or certified by an independent certified public accountant. Information submitted to or maintained by the department is subject to Chapter 552, Government Code, other than information related to:

- (1) identification of client companies;
- (2) net worth;
- (3) financial statements; or
- (4) federal tax returns.

The other statute you raise, section 301.081 of the Government Code, governs the release of employment information held by the Texas Workforce Commission (the “commission”).

You explain that the department obtained some of the records at issue from the commission.² Section 301.081 provides in pertinent part as follows:

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

....

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

Finally, you direct our attention to section 91.013 of the Labor Code, which requires the department to “conduct a thorough background investigation of each individual applicant and of each controlling person of each applicant to determine whether that applicant or controlling person is qualified under this chapter.” In this regard, the department is specifically authorized to obtain criminal history record information (“CHRI”) from the Texas Department of Public Safety. Gov’t Code § 411.122. The CHRI that the department obtains from the Texas Department of Public Safety “is for the exclusive use of the [department]” and may be used or disclosed only in accordance with other law. Gov’t Code § 411.084.

We have reviewed the information at issue and conclude that most of the information is made confidential under sections 91.014 and 301.081 of the Labor Code, as well as section 411.084 of the Government Code. We have marked the few documents that do not appear to be governed by these three provisions. Because you have raised no other applicable exception for these documents, they must be released.

²It is the well-settled policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. Attorney General Opinion H-683 (1975). The Texas Public Information Act does not undercut that policy. *Id.* Confidential information may be transferred between state agencies without destroying its confidential character and without constituting a release to the public if the agency to which the information is transferred has authority to obtain the information. Open Records Decision No. 516 (1989), 490 (1988). Consequently, confidential information may be “transferred between state agencies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between state agencies.” Attorney General Opinion H-683 at 4. In this regard, you have submitted to this office a copy of an agreement between the department and the commission to “exchange information necessary for the proper regulation and taxation of the staff leasing industry.”

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/seg

Ref: ID# 145649

Encl. Submitted documents

cc: Mr. James M. Hughes
Lindow & Treat, L.L.P.
112 East Pecan, Suite 2300
San Antonio, Texas 78205
(w/o enclosures)