



July 10, 2001

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-2951

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149214.

The Texas Department of Human Services (the "department") received a request for information relating to the investigation of Regional Home Health Care. You state that you will release some of the requested information. However, you claim that the remainder of 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 information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that most of the submitted information is confidential under section 142.009(d) of the Health and Safety Code. Section 142.009(d) provides as follows:

The reports, records, and working papers used or developed in an investigation made under [Chapter 142] are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirement; or

(7) as provided by Section 142.0092.

You indicate that the submitted information was used or developed in an investigation under chapter 142 of the Health and Safety Code. You further indicate that the submitted information contains a form DHS 3724 that identifies the deficiencies of Regional Home Health Care. Thus, you assert section 142.009(d) only with respect to the person identified on the form. *See* Health & Safety Code § 142.009(d)(5). However, the only person identified in the submitted form DHS 3724 is the facility representative. We do not believe that section 142.009(d)(5) of the Health and Safety Code applies to except from disclosure the identity of the facility representative listed in the submitted form. Therefore, the department must release the submitted form DHS 3724 to the requestor. Other than the form DHS 3724, you have provided us with no information indicating that any of the exceptions to confidentiality under section 142.009(d) apply to the submitted information. Therefore, we find that the remaining submitted information is confidential under section 142.009(d) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

You indicate that portions of the submitted form DHS 3724 are confidential under section 142.004(d) of the Health and Safety Code as well as common law privacy. Section 142.004 of the Health and Safety Code provides the requirements for applying “for a license to provide home health, hospice, or personal assistance services.” Section 142.004(d) provides that “[i]nformation received by the department relating to the competence and financial resources of the applicant or controlling person with respect to the applicant is confidential and may not be disclosed to the public.” You contend that the form DHS 3724 relates to the financial resources of Regional Home Health Care. However, at the

time the form DHS 3724 was produced, it appears Regional Home Health Care was already licensed to provide home health, hospice, or personal assistance services. That is, Regional Home Health Care was not an applicant at the time the form DHS 3724 was produced. Therefore, we do not believe that section 142.004(d) applies to form DHS 3724.

You also contend that financial information contained in form DHS 3724 is confidential under common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information that does not relate to a financial transaction between an individual and a governmental body can be confidential under common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). You indicate that the submitted form DHS 3724 contains the financial information of Regional Home Health Care. You further state that while Regional Home Health Care operated as a corporation at one time, it was a sole proprietorship at the time form DHS 3724 was produced. Thus, while the corporation would not have been entitled to protection under common law privacy, *see* Open Records Decision No. 620 at 4 (1993), you argue the sole proprietorship should be afforded such protection because its financial information is actually the financial information of its owner. Even if Regional Home Health Care is entitled to a common law right to privacy, we do not believe the information in the submitted form DHS 3724 is protected under common law privacy because, while the financial information may be considered intimate, the public has a legitimate interest in the information, as reflected by the department's regulations requiring that licensed entities such as Regional Home Health Care maintain the financial ability to carry out their functions. 40 T.A.C. 97.21(b)(7). Consequently, we find that the submitted form DHS 3724 is not excepted from disclosure and 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 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 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 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 149214

Enc: Submitted documents

c: Ms. Joan McGee
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(w/o enclosures)