



October 11, 2001

Mr. Michael D. Chisum
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2001-4619

Dear Mr. Chisum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153142.

The Texas Department of Licensing and Regulation (the "department") received a request for the entire licensing file of AMS Staff Leasing & AMS Construction Company d/b/a AMS Staff Leasing Company. You state that you have released some of the requested documents to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also have notified the licensee that its proprietary rights may be implicated by this request. We have considered the exceptions you claim and reviewed the submitted information.

We first address your section 552.110 claim. You have not submitted any arguments to demonstrate that the submitted information is excepted from public disclosure pursuant to section 552.110. Gov't Code § 552.301. In addition, this office has not received any comments from the licensee as to why any of the information at issue is excepted from public disclosure. Therefore, this office has no basis on which to conclude that any portion of the submitted information 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). Therefore, we conclude that none of the submitted information may be withheld under section 552.110 of the Government Code.

We next address your section 552.101 arguments. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 submitted 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.

We have reviewed the submitted information and conclude that some of the information is made confidential under section 91.014(d) of the Labor Code. We have marked the documents that the department must withhold under section 91.014(d) of the Labor Code.

However, we note that the submitted information also contains a document that has been filed with a court. Documents filed with a court are generally a matter of public record and may not be withheld from disclosure unless they are confidential under other law. *See Gov't Code § 552.022(a)(17)* (providing for required public disclosure of information that also is a matter of public court record); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, we will consider whether this document is confidential under law. Section 91.014(d)(2) makes confidential information related to the "net worth" of a licensee. We find that the court document relates to the net worth of the licensee and is therefore confidential under other law for purposes of section 552.022(a)(17) of the Government Code.

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.¹ 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.

We have reviewed the submitted information and conclude that none of the information is made confidential under section 301.081. Therefore, the department may not withhold any of the submitted information under section 301.081 of the Labor Code.

Next, you also cite 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. No agency or individual shall confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information. 28 C.F.R. § 20.21(c)(2). We have marked the CHRI that the department must withhold in the submitted documents.

¹ It 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. Open Records Decision Nos. 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."

We also note that the submitted documents include fingerprints. Section 411.082 of the Government Code expressly excludes fingerprints from the definition of CHRI. Section 411.082(2) states in pertinent part:

(2) "Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system[.]

Gov't Code § 411.082(2). Therefore, the department may not withhold the fingerprints in the submitted documents under section 411.083 of the Government Code.

Next, we note that the social security numbers in the submitted documents are excepted by section 552.101 in conjunction with section 51.251 of the Occupations Code. A note following section 51.251 of the Occupations Code provides the following:

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

The submitted information contains the social security numbers of individuals who are applicants for a license issued under the authority of the department. We conclude that the social security numbers provided to the department as part of an application for a license must be withheld under section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code.

Finally, we note that some of the submitted information is excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the Texas driver's license numbers that you must withhold under section 552.130.

In summary, the department must withhold the information we have marked under section 91.014(d) of the Labor Code and under section 411.083 of the Government Code. The department may not withhold any of the submitted information under section 301.081 of the Labor Code. The department must withhold the social security numbers under section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code. Finally, the department must withhold the information we have marked under section 552.130 of the Government Code. The rest of 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 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 Dept. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/sdk

Ref: ID# 153142

Enc: Marked documents

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(w/o enclosures)