



June 4, 2002

Mr. Tim Molina
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2002-3011

Dear Mr. Molina:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163850.

The Office of the Attorney General (the "OAG") received a request for "all information related to the visit [the requestor] received from [an OAG employee] in May of 2001." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. You explain that the Medicaid Fraud Control Unit ("MFCU") of the OAG is charged by federal law to conduct "a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program," and reviewing "abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan. . . ." See 42 C.F.R. § 1007.11. Therefore, we find that the MFCU is a law enforcement agency for purposes of section 552.108. See *e.g.*, Open Records Decision No. 211 at 3 (1978) (Attorney General's Organized Crime Task Force is law enforcement agency for purposes of predecessor to section 552.108).

¹We assume that 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.

You explain that the submitted information relates to an ongoing Medicaid fraud investigation. Accordingly, we find that the requested information is information held by a law enforcement agency, and that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the OAG may withhold the submitted information under section 552.108(a)(1), except as noted below.

Basic information about a person, an arrest or a crime is not excepted from disclosure under section 552.108.² *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). You also claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Thus, we will consider whether any of the basic information is excepted under section 552.101. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal and state statutes prohibit the disclosure of information concerning clients of a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* 42 U.S.C. § 1396a(a)(7); Hum. Res. Code §§ 12.003, 21.012; Open Records Decision Nos. 584 (1991), 166 (1977); *see also* 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.301; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the [Department of Human Service's] assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [Department of Human Services] or acquired by employees of the [Department of Human Services] in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the [Department of Human Service's] clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (department

²Further, basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 362 (1983)

shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department's assistance programs to purposes directly connected with administration of programs); *see also* Open Records Decision No. 166 (1977). In this instance, we find that, to the extent the basic information to be released under *Houston Chronicle* encompasses individual client information, such basic information is excepted from disclosure under section 552.101 in conjunction with section 12.003 of the Human Resources Code. For any basic information not excepted under section 552.101, we will address your argument under section 552.111.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). Section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. We find that none of the information that constitutes basic information is excepted under section 552.111.

We further note that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. Section 552.022(a)(3) defines one such category as "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." The submitted information contains a State of Texas travel voucher which must be released under subsections (a)(3) unless the information is expressly made confidential under other law. You claim that the information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111. Sections 552.103, 552.108, and 552.111 are discretionary exceptions under the Public Information Act (the "Act") and do not constitute "other law" for purposes of section 552.022(a)(3). Open Records Decision Nos. 663 (1999) (governmental body may waive sections 552.103 and 552.111), 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989) (discretionary exceptions in general). Therefore, the information subject to release under section 552.022(a)(3) may not be withheld under these exceptions. We also find that this information is not made confidential under section 552.101 in conjunction with section 12.003 of the Human Resources Code.

We note, however, that the information subject to section 552.022(a)(3) contains the social security number of an OAG employee. Section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of

information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the OAG must withhold the social security number we have marked under section 552.117 if the employee made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If no such election was made, then the social security number may nevertheless be confidential under federal law. A social security number is excepted from required public disclosure under section 552.101 of the Act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the OAG pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, the OAG may withhold the submitted information under section 552.108(a)(1) with the exception of basic information and information made public under section 552.022(a)(3). Basic information that encompasses individual client information must be withheld in this case under section 552.101. The OAG must withhold the social security number we have marked if the employee made a timely election under section 552.024 to withhold that information, or if such information was obtained or is maintained by the OAG pursuant to any provision of law enacted on or after October 1, 1990. The remainder of the information subject to section 552.022(a)(3) must be released to the requestor (see reg flag).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 163850

Enc. Submitted documents

c: Ms. Deborah E. Cook
1200 East State Highway 31
Longview, Texas 75604
(w/o enclosures)