



September 9, 2002

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P O Box 149030
Austin, Texas 78714-9030

OR2002-5023

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168260.

The Texas Department of Human Services (the “department”) received a request for copies of documents pertaining to three business entities. You state that the requestor subsequently clarified and broadened her request. *See* Gov’t Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request). You state that you have released the vast majority of the responsive information to the requestor. You claim, however, that portions of the requested information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with section 142.004(d) of the Health and Safety Code.¹ Section 142.004 provides the requirements for applying “for a license to provide home health, hospice, or personal assistance services.” Health & Safety Code § 142.004(a), (c). 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

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

applicant is confidential and may not be disclosed to the public.” Health & Safety Code § 142.004(d). You state that portions of the information at issue were received by the department pursuant to the requirements of section 142.004. You indicate that this information pertains to the competence and financial resources of applicants. Based on our review of your arguments and the information at issue, we agree that the information that we have marked is confidential under section 142.004(d) of the Health and Safety Code and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You also claim that social security numbers that are contained within the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that these social security numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that the numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you claim that portions of the information at issue are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, we conclude that the department must withhold from disclosure the bank account number information that we have marked pursuant to section 552.136 of the Government Code.

In summary, the department must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code. Social security numbers that are contained within the information at issue may be confidential pursuant to federal law. The department must withhold from disclosure the bank account number information that we have marked pursuant to section 552.136 of the Government Code. The department must release the remaining submitted information to the requestor.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168260

Enc. Marked documents

cc: Ms. Susan Tucker
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(w/o enclosures)