



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

February 5, 2003

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Legal & Compliance  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2003-0769

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176137.

The Texas Department of Insurance (the "department") received a written request for "any financial information you have on ERN Holdings Inc., ERN Administrators, ERN Holdings Inc. 401 K Plan, ERN International Inc. and Employer Resource Network Inc." You state that some of the requested information will be released. You contend, however, that other responsive information is excepted from disclosure under section 552.101 of the Government Code. Further, you state that you have notified ERN Holdings, Inc. ("ERN") of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

Section 552.101 of the Government Code 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 contend that the social security numbers contained in the submitted records are made confidential under section 56.001 of the Occupations Code, which provides as follows:

The 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 specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. You explain that the social security numbers at issue were required to be submitted to the department “as part of the application process as a third party administrator.” *See* art. 21.07-6 Ins. Code. Accordingly, we find that the social security numbers fall under section 56.001 of the Occupations Code, as encompassed by section 552.101, and must therefore be withheld.<sup>1</sup>

The department takes no position as to whether any of the remaining submitted information is excepted from public disclosure. The department believes, however, that ERN may have a proprietary interest in some of that information. An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from ERN for withholding the requested information. We thus have no basis for concluding that any of the remaining information is excepted from required public disclosure. Consequently, only the submitted social security numbers that you have marked are excepted from required public disclosure; the remaining submitted information must be released 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).

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<sup>1</sup>Because we resolve this aspect of your request under section 56.001 of the Occupations Code, we need not address your other arguments for withholding the social security numbers.

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. 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/RWP/lmt

Ref: ID# 176137

Enc: Submitted documents

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