



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 6, 2003

Ms. Rebecca L. Payne  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2003-3047

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180508.

The Department of Human Services (the "department") received a request for information relating to a named patient and the Garden Village Retirement Village for a certain period. You state that information that constitutes reports, records, and working papers used or developed in an investigation under section 142.009 of the Health and Safety Code will be withheld in accordance with the previous determination issued to the department in Open Records Letter No. 2001-5348 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-9 (2001) (delineating instances in which attorney general decision constitutes previous determination under Gov't Code § 552.301). You state that you will release other requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

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 exception encompasses information that another statute makes confidential. You claim that some of the submitted information is confidential under 142.009(d)(5) of the Health and Safety Code. This section provides that "reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except... (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[.]" Health & Safety Code § 142.009(d)(5). You acknowledge that the department is required to release the submitted state forms under section 142.009(d)(5). You claim, however, that this section requires the department to withhold the identifying

information contained in the state forms. You have highlighted that information. We agree that you must withhold the highlighted portions of the state forms under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code.

Next, you assert that some of the remaining submitted information is confidential under section 142.004 of the Health and Safety Code. This section provides in part that “[i]nformation received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.” Health & Safety Code § 142.004(d). You explain that the information at issue was submitted to the department during the licensing process. You inform us that the department obtained this information under section 142.004. You state that portions of this information relate to the competence of the applicant or a controlling person with respect to the applicant. You state that other information relates to the financial resources of the applicant. Based on your representations and our review of the information in question, we have marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with section 142.004 of the Health and Safety Code.

We also note that some of the submitted information is subject to section 552.101 in conjunction with section 56.001 of the Occupations Code. Section 56.001 provides:

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 indicate that the department obtained the social security numbers at issue from license applicants. Accordingly, we conclude that the department must withhold from disclosure the social security numbers that you have highlighted pursuant to section 552.101 in conjunction with section 56.001 of the Occupations Code.

You next assert that certain client information is confidential under section 552.101. Federal and state statutes prohibit the disclosure of information concerning 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 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). You state that in this instance, that release of the requested information would not be for purposes directly connected with the administration of the department’s assistance programs. Therefore, the information at issue is confidential under sections 12.003 and 21.012 of the Human Resources Code and must be withheld from disclosure under section 552.101 of the Government Code.

In summary, the department must withhold some of the submitted information, which we have marked, under section 552.101 of the Government Code in conjunction with sections 142.009 and 142.004 of the Health and Safety Code. Social security numbers that you have highlighted are confidential under section 552.101 in conjunction with section 56.001 of the Occupations Code. Client information, which we have marked, must be withheld from disclosure under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. The remaining submitted information must be released to the requestor. Because our ruling is dispositive, we need not address your remaining claims.

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).

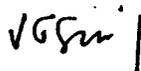
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 180508

Enc: Submitted documents

c: Mr. Marcus L. Stevenson  
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(w/o enclosures)