



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 16, 2003

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

OR2003-4930

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 184300.

The Texas Department of Human Services (the "Department") received a request for licensure information regarding Nurse Call Home Health Care, L.L.C., to include any "correspondence, change of address forms, and change of ownership forms." You inform us that the Department will release most of the requested information to the requestor. You further state that, in accordance with Open Records Letter No. 2001-5348 (2001), you have withheld from the requestor "reports, records, and working papers" used or developed in the course of an investigation conducted under section 142.009 of the Health and Safety Code and information required to be withheld pursuant to section 142.009(d)(6)(A) of the Health and Safety Code. *See* Open Records Decision No. 673 (2001).<sup>1</sup> However, you assert a

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<sup>1</sup>The five criteria for this type of "previous determination" are 1) the requested records or information at issue fall within a specific, clearly delineated category of information about which this office has previously rendered a decision; 2) the previous decision is applicable to the particular governmental body or type of governmental body from which the information is requested; 3) the previous decision concludes that the specific, clearly delineated category of information is or is not excepted from disclosure under the Act; 4) the elements of law, fact, and circumstances are met to support the previous decision's conclusion that the requested records or information at issue is or is not excepted from required disclosure; and 5) the previous decision explicitly provides that the governmental body or bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from this office.

portion of the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

First, we address your arguments under section 552.101 of the Government Code, which 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 claim section 142.004 of the Health & Safety Code governs some of the submitted licensing information. Section 142.004(d) provides as follows:

Information 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). Based on your representations and our review of the submitted information, we agree that the portions of the submitted documents that consist of answers to questions concerning criminal convictions constitute confidential information as they relate to the competence of an applicant. *See* Health & Safety Code § 142.004(d). Therefore, the Department must withhold most of the information you have marked under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code.<sup>2</sup> We note, however, that the document titled “Criminal History Check HCSSA Licensure” does not contain any criminal history information and therefore must be released to the requestor, except as discussed below.

Next, you contend that the social security numbers contained in the submitted information are confidential under section 552.101 in conjunction with section 231.302 of the Family Code. In relevant part, section 231.302 states the following:

(c) To assist in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601-617 and 651-669):

(1) each licensing authority shall request and each applicant for a license shall provide the applicant's social security number[.]

. . . .

(e) Except as provided by Subsection (d), a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the

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<sup>2</sup> As section 142.004(d) is dispositive, we need not address your claims under common-law privacy.

provisions of Part A or D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq).

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(g) In this section, "licensing authority" has the meaning assigned by Section 232.001.

Fam. Code § 231.302(c)(1), (e), (g). You inform us that the Department is a licensing authority as defined by section 232.001 of the Family Code. *See* Fam. Code § 232.001(2) (defining "licensing authority" as a department . . . of the state . . . that issues a license). Further, you explain that, in this instance, disclosure of the social security numbers would not be for a permitted purpose under section 231.302(e) of the Family Code. *See* Fam. Code § 231.302(e). Based on your representations and our review of the information, we conclude the Department must withhold the social security numbers contained in the submitted records in accordance with section 552.101 in conjunction with section 231.302(e) of the Family Code.<sup>3</sup>

Last, as you note, the submitted documents contain an e-mail address subject to section 552.137 of the Government Code. Specifically, section 552.137 states the following:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. This provision makes certain e-mail addresses confidential. *See* Gov't Code § 552.137. You do not inform us that the member of the public has affirmatively consented to the release of the e-mail address contained in the documents at issue. Therefore, the Department must withhold the e-mail address of the member of the public, which you have marked, under section 552.137 of the Government Code.

In summary, the Department must withhold the following information under section 552.101 of the Government Code in conjunction with the specified provision: 1) the information regarding criminal history contained in the licensure application under section 142.004(d) of the Health and Safety Code, and 2) the social security numbers under section 231.302(e) of the Family Code. The Department also must withhold the highlighted e-mail address

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<sup>3</sup>Because we resolve this aspect of your request under section 231.302, we need not address your other arguments for withholding the social security numbers.

under section 552.137 of the Government Code. The Department must release the remainder of the submitted information to the requestor, including the document titled "Criminal History Check HCSSA Licensure," except for the social security numbers contained therein.

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,

A handwritten signature in cursive script that reads "Christen Sorrell". The signature is written in black ink and is positioned above the typed name.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/RWP/seg

Ref: ID# 184300

Enc: Submitted documents

c: Mr. James E. Golden, Jr.  
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(w/o enclosures)