



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2003

Mr. Steve Aragón  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2003-8191

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191068.

The Texas Health and Human Services Commission (the "commission") received a request for all provider numbers for a particular provider as well as the applications for the provider numbers. You claim that the 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 reviewed the submitted information.

Section 552.101 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, such as section 51.251 of the Occupations Code. The relevant note following section 51.251 provides:

[t]he 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 specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occupations Code § 51.251. The social security numbers at issue here appear on application materials for the provider numbers referenced by the request. However, you do not inform us, nor does it appear from our review of the submitted information, that these social security

numbers were provided to the commission by the individual as an applicant or holder of a license, certificate of registration, or other legal authorization to practice in a specified occupation or profession. *See id.* Accordingly, we conclude that the commission may not withhold the social security numbers under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code.

Nevertheless, these social security numbers may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or is maintained by the board under any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 at 2-4 (1994).* In this instance, we have no reason to conclude that the social security numbers in question are confidential under section 405(c)(2)(C)(viii)(I) of the federal law and therefore excepted from disclosure under section 552.101 of the Government Code. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352.* Therefore, before releasing the social security numbers in the submitted information, the commission should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

We note that you seek to withhold employer tax identification numbers; however, you have not directed us to a provision of law, nor are we aware of any, that makes the submitted federal employer identification numbers confidential. Therefore, you may not withhold these numbers under section 552.101 of the Government Code.

Finally, you argue that the requested provider numbers are confidential under section 552.136 of the Government Code, which provides:

(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.

You argue that requested provider numbers are the numbers assigned to a provider who has been accepted into the Medicaid program. You state that these numbers are assigned for identification and billing purposes. As such, they “may be used to obtain money from the Medicaid program or to initiate the transfer of funds from the program.” Based on these representations, we conclude that the Medicaid provider numbers you have marked may be used to obtain money and are therefore confidential under section 552.136.

In summary, the social security numbers in the submitted information may be confidential under federal law. You must withhold the Medicaid provider numbers you have marked under section 552.136 of the Government Code. You must release the remaining 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).

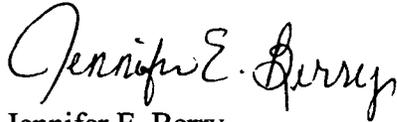
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 191068

Enc: Submitted documents

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(w/o enclosures)