



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2004

Ms. Shari L. Nichols
Regional Attorney
Texas Department of Human Services
P. O. Box 15995
Austin, Texas 78761-5995

OR2004-0943

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195107.

The Texas Department of Human Services (the "department") received a request for copies of investigations for two complaints pertaining to the requestor's case. You state that the department will release a portion of the requested information to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.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." This section encompasses information other statutes make confidential. You inform us that you have marked information that pertains to clients of a state plan for medical assistance. Sections 12.003 and 21.012 of the Human Resources Code, which govern such information, prohibit the disclosure of information concerning clients of such a plan, except for a purpose

¹We note that although you have labeled some of the documents with section 552.102, you did not submit written comments to this office explaining how that exception would apply to the submitted information. Thus, we assume you are no longer asserting this exception to disclosure. See Gov't Code §§ 552.301, .302.

directly connected with the administration of the plan. *See* Hum. Res. Code §§ 12.003, 21.012; *see also* 40 T.A.C. §§ 71.4 (information may be released if it is for purposes reasonably necessary for administering assistance program); Open Records Decision Nos. 584 (1991), 166 (1977).

Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department'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 or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a) (emphasis added). The term "assistance" in sections 12.003 and 21.012 of the Human Resources Code includes "all forms of assistance and services for needy persons authorized by Subtitle C." *Id.* § 11.001(4). 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's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Open Records Decision No. 584 at 3. 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 also* Hum. Res. Code § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs).

Based on your arguments and markings, we understand you to represent that the highlighted portions of the submitted information that you assert are protected under section 12.003 are directly or indirectly derived from the records, papers, files, or communications of the department or acquired by department employees in the performance of their official duties. The release of this information in this instance would not be for purposes directly connected with the administration of the department's assistance programs. Thus, the information you have highlighted under tabs A through G of each complaint file is confidential under section 12.003 of the Human Resources Code and therefore must be withheld pursuant to section 552.101 of the Government Code.²

²Because our ruling is dispositive, we need not address your other arguments for this information.

With respect to the remaining information, which you have highlighted and marked under section 552.102, we note that this information may be confidential under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. For those employees who timely elected to keep their personal information confidential, the department must withhold the employees' home addresses³ and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The department may not withhold this information under section 552.117(a)(1) for those employees who did not make a timely election to keep the information confidential. We have marked the information that must be withheld if section 552.117 applies. We note, however, that the requestor has a special right of access to his own personal information.⁴ *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that relates to person and that is protected from disclosure by laws intended to protect person's privacy interest).

Finally, we note that even if section 552.117 does not apply to the submitted information, social security numbers within the submitted documents may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for

³We note, however, that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed at home. *See* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)." (Emphasis added.)); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

⁴Because the requestor's information may be confidential with respect to the general public if he made a timely section 552.024 election, the department should again seek a decision from this office if it receives a future request for this information from an individual other than the requestor or his authorized representative.

concluding that the social security numbers contained within the submitted information are confidential under 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 they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude: (1) the department must withhold the information it has highlighted in tabs A through G of each complaint file under section 552.101 in conjunction with section 12.003 of the Human Resources Code, (2) the department must withhold the information we have marked under section 552.117, but only if that exception applies, and (3) social security numbers may otherwise be confidential under federal law. The remaining information must be released.

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 black ink, appearing to read 'Sarah I. Swanson', with a long horizontal line extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 195107

Enc. Submitted documents

c: Mr. Daniel Chico
3604 Levy Lane, Box 14
Killeen, Texas 76542-2844
(w/o enclosures)