



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2004

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

OR2004-1148

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# 196304.

The Texas Department of Human Services (the "department") received a request for all information for a certain time period relating to "Sue Wallace; Anita Sue Wallace; Sue Wallace Enterprises, Inc.; Assisted Services, Inc.; or Assisted Services," specifically including information regarding (1) a department license, (2) a department contract, and (3) a named individual. You state that the department does not possess any information responsive to items 2 and 3.¹ You also state that the department has released most of the information responsive to item 1 but will withhold some responsive information pursuant to the previous determination issued to the department in Open Records Letter No. 2001-5348 (2001). *See* Gov't Code § 552.301(a); *see also* 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 claim that portions of the submitted 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 We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

You assert that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Section 142.009(d)(5) provides:

(d) 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 assert that the identifying information of individuals contained in the submitted state form is confidential under section 142.009(d)(5). Based on your representations and our review of this particular information, we agree that the department must withhold this information pursuant to section 552.101 in conjunction with section 142.009(d)(5) of the Health and Safety Code.

You also assert that portions of the submitted information are excepted from disclosure under section 552.101 in conjunction with section 142.004 of the Health and Safety Code. Section 142.004 provides in part:

(d) 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 information at issue, we agree that most of the information that you have marked is confidential under section 142.004(d) of the Health and Safety Code. Accordingly, we conclude that the department must withhold most of this information under section 552.101. We note, however, that the document titled “Criminal History Check HCSSA Licensure” does not contain any criminal history information and, therefore, may not be withheld on this basis.

You also assert that the social security number included in the submitted information is excepted from disclosure under section 552.101 in conjunction with section 231.302 of the Family Code. Section 231.302 provides in part:

(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 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).

....

(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 under section 232.001 of the Family Code. *See* Fam. Code § 232.001(2) (defining "licensing authority" as department of state that issues license). You explain that, in this instance, release of the submitted social security number would not be for a permitted purpose under section 231.302(e) of the Family Code. *See id.* § 231.302(e). Based on your representations and our review of the information at issue, we agree that the department must withhold the marked social security number under section 552.101 in conjunction with section 231.302(e) of the Family Code.²

In summary, the department must withhold the information that you have marked under section 552.101 in conjunction with section 142.009(d)(5) of the Health and Safety Code and section 231.302 of the Family Code. The department must also withhold the information that you have marked pursuant to section 552.101 in conjunction with section 142.004 of the Health and Safety Code, with the exception of the document titled "Criminal History Check HCSSA Licensure," which must generally be released. The department must release the remaining submitted information.

² Because we are able to make this determination, we do not address your arguments under section 56.001 of the Occupations Code.

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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 196304

Enc. Submitted documents

c: Mr. Mark Berry
700 North Stanton, Suite 200
El Paso, Texas 79902
(w/o enclosures)