



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2007

Mr. Michael G. Young
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756-3199

OR2007-08074

Dear Mr. Young:

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# 282000.

The Texas Department of State Health Services (the "department") received a request for a list of "[all] predominantly WIC vendors[.]"¹ You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential. Section 552.101 has been found by this office to encompass information made confidential by federal regulations. *See Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex. App.— Austin 1995, writ denied) (court approves office of attorney general finding to withhold, under section 552.101, unemployment compensation identification numbers as made confidential by federal regulations).

¹You inform us that the department sought and received clarification of the request from the requestor. *See Gov't Code § 552.222(b)* (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); Open Records Decision No. 633 at 5 (1999) (ten business-day deadline tolled while governmental body awaits clarification).

The WIC program is regulated by title 7 of the Code of Federal Regulations. Section 246.26(e) of this title provides for the confidentiality of certain information about a WIC program vendor:

Confidential vendor information is any information about a vendor (whether it is obtained from the vendor or another source) that individually identifies the vendor, except for vendor's name, address and authorization status. Except as otherwise permitted by this section, the State agency must restrict the use or disclosure of confidential vendor information to [specific entities].

7 C.F.R. § 246.26(e). The purpose for protecting vendor information by limiting its use and disclosure is two-fold: "to encourage vendors to provide the information necessary to authorize and monitor vendors and to avoid compromising state agency investigative techniques." 65 Fed. Reg. 83248, 83275 (2000), *see also* 64 Fed. Reg. 32308, 32333 (1999). This provision is generally designed to protect all information about WIC vendors, not just identifying information. However, vendors' names, addresses, and authorization statuses, on their own, are not protected under this provision. *See* 7 C.F.R. § 246.26(e). Moreover, these limitations on use and disclosure are not applicable to aggregate data about WIC vendors and other data that do not individually identify a vendor. *See* 65 Fed. Reg. 83248, 83276 (2000). Furthermore, section 246.26(e) provides for the release of confidential vendor information in certain circumstances. *See* 7 C.F.R. § 246.26(e)(1)-(3).

You state that the submitted information individually identifies Predominantly-WIC ("PWIC") vendors. You also state that these vendors are stores whose "WIC sales . . . comprise more than 50% of its gross food sales." Based on your representations and our review of the submitted information, we find that it consists of information about vendors that individually identifies the vendors. We note that the submitted information contains the names and addresses of vendors. However, we find that where, as here, the request is for information pertaining to PWIC-only stores, the release of the vendor names and addresses from the submitted information would necessarily reveal information about vendors beyond their names and addresses. We therefore conclude that all of the submitted information is subject to section 246.26(e) of title 7 of the Code of Federal Regulations. You inform us that none of the release provisions of section 246.26(e) is applicable in this instance. We therefore conclude that the submitted information is confidential in its entirety under section 246.26(e) and must be withheld from the requestor under section 552.101 of the Government 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/jb

Ref: ID# 282000

Enc. Submitted documents

c: Mr. Carlos Salazar, Jr.
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(w/o enclosures)