



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2009

Ms. Sylvia F. Hardman  
General Counsel  
Texas Department of Assistive and Rehabilitative Services  
4800 North Lamar Boulevard, Suite 300  
Austin, Texas 78756

OR2009-07061

Dear Ms. Hardman:

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# 343793.

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for information from a specified time period pertaining to the debarment of a specified company.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. You also state you notified the Office of the Attorney General (the "OAG") of the request and of its right to submit arguments as to why the requested information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the OAG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it occurred outside the specified time period. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Next, we note that the submitted documents include purchase orders, money orders, and a contract that fall within the scope of section 552.022 of the Government Code.

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<sup>1</sup>The department states it sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

Section 552.022(a)(3) provides for required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body,” unless the information is expressly confidential under other law. *Id.* § 552.022 (a)(3). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, the purchase orders, money orders, and contract may not be withheld under section 552.108. You also raise section 552.101 of the Government Code for some of this information, which is other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, we will determine whether the department must withhold any of the information subject to 552.022 under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes. Section 111.057 of the Human Resources Code provides as follows:

(a) Except for purposes directly connected with the administration of health and human service programs and in accordance with regulations, it is unlawful for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or *any information directly or indirectly derived* from records concerning persons applying for or receiving health and human services.

(b) The [department] is authorized to provide client and other information to and receive client and other information from any state agency for the purpose of increasing and enhancing services to clients and improving agency operations, except where federal law or regulations preclude such sharing.

(c) The [department] shall adopt rules to carry out the purposes of this section.

Hum. Res. Code §111.057 (emphasis added).<sup>2</sup> Because some of the submitted information subject to section 552.022 is information directly or indirectly derived from records concerning persons applying for or receiving health and human services, we conclude that

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<sup>2</sup>The 78th Legislature transferred all powers, duties, functions, programs, and activities of the former Texas Rehabilitation Commission to the department effective March 1, 2004. *See* Act of June 1, 2003, 78th Leg., R.S., ch. 198, §§ 1.01, 1.21, 1.26, 2003 Tex. Gen. Laws 611, 612, 641.

the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resources Code.

We now address the submitted arguments for the information not subject to section 552.022. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code §§ 552.108. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. The OAG asserts that release of the information at issue could interfere with an ongoing criminal investigation that the OAG’s Criminal Investigation Division and Criminal Prosecution Division are conducting. Based on this representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref’d n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the remaining responsive information under section 552.108(a)(1).<sup>3</sup>

In summary, with the exception of the information we have marked under section 552.101 in conjunction with section 111.057 of the Human Resources Code, the department must release the information subject to section 552.022(a)(3) of the Government Code.<sup>4</sup> The remaining responsive information may be withheld under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.

<sup>4</sup>We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/eeg

Ref: ID# 343793

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: Sgt. Dara Barner  
Criminal Investigations Division  
Office of the Attorney General  
(w/o enclosures)

Public Information Coordinator  
Office of the Attorney General  
(w/o enclosures)