



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 5, 1998

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR98-0606

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113596.

The Texas Department of Health (the "department") received a request for information concerning the Day Star Home Health Agency, Inc. ("Day Star"). You assert that certain financial information Day Star submitted when it applied for a license to provide home health, hospice or personal assistance services is excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is deemed confidential by law, including information made confidential by statute. You raise Health and Safety Code section 142.004(d), which reads as follows:

Information received by the department relating to the competence and financial resources of the applicant is confidential and may not be disclosed to the public.

The records at issue are budget documents that appear to relate to Day Star's competence and financial resources. We conclude that the department must withhold the information from the requestor as information made confidential by statutory law.<sup>1</sup> Gov't Code § 552.101.

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<sup>1</sup>The department failed to timely seek an open records decision, a fact which can result in the legal presumption that the requested information is public. Gov't Code §§ 552.301, .302. However, the fact that the information is considered to be confidential by law presents a compelling reason to overcome that presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 150 (1978).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 113596

Enclosures: Submitted documents

cc: Ms. Gwenda George English  
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(w/o enclosures)