

January 22, 1999

Mr. Eric M. Bost
Texas Department of Human Services
701 West 51st Street
Austin, Texas 78714-9030

OR99-0207



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —

JOHN CORNYN
Attorney General

— * —

P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Dear Mr. Bost:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121453.

The Texas Department of Human Services (the "department") received a request for the department's investigative files on three nursing administrators. Although you state that most of the requested information will be released, you claim that the submitted documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You first assert that the submitted investigative materials are excepted from disclosure under section 552.108 of the Government Code, and you refer us to *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) to support this contention. Section 552.108 excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

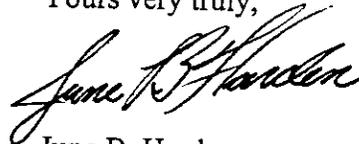
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a). We have considered your section 552.108 claim in light of the court's opinion in *A & T*, and we do not believe that the information at issue falls within the scope of section 552.108. See Open Records Decision No. 493 (1988), 199 (1978). Therefore, the department may not withhold the submitted information under section 552.108.

You also argue that certain information contained in the submitted documents is confidential by law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and 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 *id.* You state that "the social security numbers at issue are maintained by the department under chapter 242, subchapter I of the Texas Health & Safety Code, which deals with the licensing of nursing facility administrators." You also state that the current version of this subchapter was adopted in 1997. Based on your representations, we conclude that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Open Records Act.

We are resolving this matter with an 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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 121453

Enclosures: Submitted documents

Ref: ID# 121453

Enclosures: Submitted documents

cc: Mr. Breck Harrison
Small, Craig & Werkenthin
100 Congress Avenue, Suite 1100
Austin, Texas 78701-4099
(w/o enclosures)