



April 1, 2002

Ms. Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR2002-1561

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160566.

The Texas Rehabilitation Commission (the "commission") received a request for copies of:

1. the current EOD_AS_PO computer data file as maintained on the agency's Data Warehouse.
2. the Data Dictionary for the EOD_AS_PO data file.
3. the agency's USAS History Extract (HX) file for a specified time period.
4. the file/record layout for the USAS History Extract file.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You claim that social security numbers that are contained within the information may be confidential under federal law. We note that a social security number or "related record" may be exempted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained and is maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990.² See Open Records Decision No. 622 (1994). Although you do not state that the social security numbers at issue were obtained or are maintained by the commission pursuant to such a provision of law, you do contend that the numbers may be confidential under section 1301 et seq. of title 42 of the United States Code. However, you do not explain, nor were we able to determine, how this provision makes these social security numbers confidential. Since you cite to no other law enacted on or after October 1, 1990 which gives the commission authority to obtain or maintain these social security numbers, we have no basis for concluding that any of the numbers are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. Accordingly, we cannot conclude that the social security numbers at issue are exempted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code.

You also claim that portions of the information are exempted from disclosure pursuant to section 552.101 in conjunction with the constitutional and common-law rights to privacy. Section 552.101 also encompasses information protected from disclosure under the constitutional and common-law rights to privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. See *id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public

² Section 552.101 of the Government Code exempts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

concern. *See id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Based on our review of your arguments and the information at issue, we find that no portion of the information is confidential under either the constitutional or common-law rights to privacy. *See* Open Records Decision Nos. 226 (1979) (noting social security numbers not protected under privacy), 169 (1977). Accordingly, we conclude that none of the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the constitutional or common-law rights to privacy.

However, we note that portions of the information contain bank account numbers that are subject to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. Accordingly, the commission must withhold the bank account numbers that we have marked pursuant to section 552.136 of the Government Code. However, the commission must release the remaining information to the requestor.

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 Department of Public 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 160566

Enc. Marked documents

cc: Mr. Marc Garcia
P.O. Box 26281
Austin, Texas 78755
(w/o enclosures)