



November 7, 2002

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2002-6354

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171924.

The Texas Department of Human Services (the "department") received a request for the e-mails of a named department employee from July 20 to August 23, 2002. You advise that some of the requested information will be released, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You state that the marked client information contained in the submitted documents was derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties and therefore is confidential pursuant to sections 12.003 and 21.012 of the Human Resources Code. Sections 12.003 and 21.012 prohibit the disclosure of information concerning clients of a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* Hum. Res. Code §§ 12.003, 21.012; *see also* 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.301; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." *See also* Hum. Res. Code § 21.012 (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department's assistance programs to purposes directly connected with administration of programs); *see also* Open Records Decision No. 166 (1977).

You state that release of the information you claim is confidential under sections 12.003 and 21.012 of the Human Resources Code would not be for purposes directly connected with the administration of the program. Therefore, we agree that the information you have highlighted in the submitted documents and annotated as confidential under these sections of the Human Resources Code is confidential, and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, if the employee whose personal information is at issue elected under section 552.024, prior to the department's receipt of the request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. You may not withhold this information under section 552.117 if the employee has not made a timely election under section 552.024. We agree that most of the personal information you have marked must be withheld under section 552.117 if the employee made a timely election. However, a small portion of this information, which we have marked, is not protected under section 552.117 and must be released.

Furthermore, the submitted documents contain e-mail addresses that must be withheld under section 552.137 of the Government Code. Section 552.137 requires the department to withhold an e-mail address of a member of the public that is provided for the purpose of

communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. *See* Gov't Code § 552.137(a), (b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Thus, we agree that the e-mail addresses you have marked must be withheld under section 552.137, with the exception of the e-mail address information we have marked for release.<sup>1</sup>

In summary, you must withhold the department's client information that you have marked under section 552.101 of the Government Code in conjunction with sections 12.003 and 21.012 of the Human Resources Code. You must withhold the information you have marked pursuant to section 552.117 if the employee whose information is at issue made a timely election under section 552.024, with the exception of the information we have marked for release. Finally, you must withhold the e-mail addresses you have marked under section 552.137, with the exception of the e-mail address information we have marked for release. The remaining information must be released.

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.

---

<sup>1</sup> We note that section 552.137 does not apply to a government employee's work e-mail address.

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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 171924

Enc. Submitted documents

c: Mr. Jose Sanchez  
c/o Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030  
(w/o enclosures)