



November 8, 2002

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

OR2002-6376

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# 171975.

The Texas Department of Human Services (the "department") received a request for information regarding Concepts of Care, a home and community support services agency. You advise that you are withholding reports, records, and working papers used or developed in an investigation under chapter 142 under section 142.009(d) of the Health and Safety Code pursuant to a previous determination issued in Open Records Letter No. 2001-5348 (2001). See Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). You state that a portion of the requested information will be released to the requestor. You claim that some additional requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that certain information in the state forms submitted as Attachment D, Statement of Licensing Violations and Plan of Correction, is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. Section 142.009(d) states that "reports, records, and working papers used or developed in an investigation . . . are confidential and may not be released or made public except: (5) on a form developed by

the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency.” Health & Safety Code § 142.009(d)(5). You acknowledge that section 142.009(d)(5) requires the department to release this state form; however, you contend the department must withhold any identifying information of an individual contained within the form. You claim that the identifying information of the representatives of the facility in the forms is confidential under section 142.009(d)(5). We agree that the identifying information you have marked in the state forms is confidential under section 142.009(d)(5). Thus, you must withhold the marked information in Attachment D pursuant to section 552.101 of the Government Code.

Next, you claim that the documents in Attachment C, and portions of the information in Attachment B, are confidential pursuant to section 142.004(d) of the Health and Safety Code. You state that Attachment B and Attachment C are records provided to the department by a licensed health care facility as required under section 142.004 of the Health and Safety Code. Section 142.004(d) provides:

Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

You state that certain documents and certain marked information in Attachment B is confidential because it relates to the competence of a controlling person of the facility. Furthermore, you state that the information in Attachment C is confidential under section 142.004(d) because it relates to the financial resources of the facility. Based on your representations and our review of the submitted information, we agree that information you have marked pursuant to section 142.004(d) in Attachment B and the information in Attachment C is confidential and must be withheld under section 552.101 in conjunction with section 142.004(d).

The documents in Attachment B also contain e-mail addresses obtained from the public. Section 552.137 of the Government Code provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].” Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the department must withhold the e-mail addresses you have marked in Attachment B under section 552.137 of the Government Code.

Finally, you contend that the social security numbers in Attachment B are confidential under section 552.101 in conjunction with federal 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.* We have no basis for concluding that any of the social security numbers in Attachment B are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number in Attachment B, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the identifying information you have marked in the state forms in Attachment D must be withheld under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. The documents in Attachment C and certain information you have marked pursuant to section 142.004(d) in Attachment B is confidential and must be withheld under section 552.101 in conjunction with section 142.004(d). The marked e-mail addresses must be withheld under section 552.137 of the Government Code. Social security numbers may be confidential under section 552.101 in conjunction with federal law. The remainder of the submitted information must be released 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 171975

Enc: Submitted documents

c: Ms. Julie Johnson
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(w/o enclosures)