OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 14, 2003

Ms. Rebecca L. Payne
Assistant General Counsel
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2003-3242

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181082.

The Texas Department of Human Services (the "department") received a request for the full names of all people residing in Shelby County who received "State or Federal Assistance such as Food stamps, Medicaid, or Welfare." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that other statutes make confidential. You assert that the requested information is confidential under 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 assistance, except for a purpose directly connected with the administration of the plan. *See* Hum. Res. Code §§ 12.003, 21.012; *see also* 40 T.A.C. §§ 71.4 (information may be released if it is for the purposes reasonably necessary for administering the assistance program); Open Records Decision Nos. 584 (1991), 166 (1977).

Section 12.003 of the Human Resources Code provides in relevant part:

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[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.

> (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) (emphasis added). The term "assistance" in sections 12.003 and 21.012 of the Human Resources Code includes "all forms of assistance and services for needy persons authorized by Subtitle C." Hum. Res. Code § 11.001(4). 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." Open Records Decision No. 584 at 3. Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See also* Hum. Res. Code § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs).

You state that release of the requested list of names of Shelby County residents who are receiving Temporary Assistance for Needy Families ("TANF"), food stamp assistance, or Medicaid benefits in response to an open records request is not a release "for purposes directly connected with the administration of the department's assistance programs." *See* 40 T.A.C. §§ 71.4, 71.11-71.14; *see also* 42 C.F.R. § 431.302 (setting forth purposes directly related to state Medicaid and Medicare administration); 7 C.F.R. § 272.1(c) (use or disclosure of information obtained from food stamp applicant or recipient households is restricted to persons specifically listed herein); 45 C.F.R. § 205.50 (limits the use or disclosure of information concerning applicants and recipients of assistance under a state plan for financial assistance under title IV-A of the Social Security Act). Based on your representations and our review of the information in question, we agree that a list of Shelby County residents receiving state or federal assistance is confidential under sections 12.003 and 21.012 of the Human Resources Code and must be withheld in its entirety.

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 Dep't of Pub. 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,

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 181082

Enc. Submitted documents

c: Mr. Billy W. Kent
P. O. Box 1434
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(w/o enclosures)