



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 12, 2003

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

OR2003-4065

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 182758.

The Texas Department of Human Services (the "Department") received a request for "a copy of all materials submitted to [the Department] by or on behalf of West Texas Health Care and Sharon Hicks, Inc., specifically including but not limited to the following: (i) Initial Application for Provider Number; and (ii) Request for Survey document, and any attachments to those documents." You inform us that the Department has released some of the requested information to the requestor. You assert a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Initially, we note the Department may rely on Open Records Letter No. 2001-5348 (2001) as a previous determination issued by this office to withhold reports, records, and working papers associated with an investigation conducted under section 142.009 of the Health and Safety Code. *See* Open Records Decision No. 673 (2001). Further, Open Records Letter No. 2001-5348 authorizes the Department to withhold the identifying information of individuals contained in a Health Care Financing Administration 2567 form, currently known as a Center for Medicare & Medicaid Services 2567 form. *See id.*

Next, we address your arguments under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information

protected by other statutes. Section 142.009(d) of the Health and Safety Code provides in pertinent part:

(d) the reports, records, and working papers used or developed in an investigation made under this section 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 assert that the identifying information of individuals contained in the state forms titled Statement of Licensing Violations and Plan of Correction is confidential under section 142.009(d)(5) of the Health and Safety Code. Upon reviewing the documents, we agree that you must withhold the identifying information of individuals you have marked on the state forms in accordance with section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code.

Next, you claim the submitted licensing information contains criminal history record information protected under section 142.004 of the Health & Safety Code. Section 142.004(d) provides as follows:

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.

Health & Safety Code § 142.004(d). Based on your representations and our review of the submitted information, we agree that the answers to questions concerning criminal convictions constitute confidential information as they relate to the competence of an applicant. *See* Health & Safety Code § 142.004(d). Therefore, the Department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code.¹

Last, you contend that the social security numbers contained in the submitted information are confidential under section 552.101 in conjunction with section 231.302 of the Family Code. In relevant part, section 231.302 states the following:

(c) To assist in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601-617 and 651-669):

¹ As section 142.004(d) is dispositive, we need not address your claims under common-law privacy.

(1) each licensing authority shall request and each applicant for a license shall provide the applicant's social security number[.]

...

(e) Except as provided by Subsection (d), a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Part A or D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq).

...

(g) In this section, "licensing authority" has the meaning assigned by Section 232.001.

Fam. Code § 231.302(c)(1), (e), (g). You inform us that the Department is a licensing authority as defined by section 232.001 of the Family Code. *See* Fam. Code § 232.001(2) (defining "licensing authority" as a department . . . of the state . . . that issues a license). Further, you explain that, in this instance, disclosure of the social security numbers would not be for a permitted purpose under section 231.302(e) of the Family Code. *See* Fam. Code § 231.302(e). Based on your representations and a review of the information, we conclude the Department must withhold the social security numbers you have highlighted in accordance with section 552.101 in conjunction with section 231.302(e) of the Family Code.

In summary, the Department must withhold the following information, which you have marked, under section 552.101 of the Government Code in conjunction with the specified provision: 1) the identifying information of individuals contained in the state forms titled Statement of Licensing Violations and Plan of Correction in accordance with section 142.009(d)(5) of the Health and Safety Code, 2) certain answers contained in the licensure application under section 142.004(d) of the Health and Safety Code, and 3) the social security numbers under section 231.302(e) of the Family Code.

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 182758

Enc: Submitted documents

c: Mr. Steven T. Holmes
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(w/o enclosures)