



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2003

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

OR2003-7892

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# 190439.

The Texas Department of Human Services (the "department") received a request for a copy of the application for license for a specified home and community support service agency. You state that the department has released some responsive information to the requestor. You claim, however, that portions of the remaining requested 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 information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 142.004 of the Health and Safety Code.<sup>1</sup> Section 142.004 provides in part:

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.

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

Health & Safety Code § 142.004(d). Based on your representations and our review of the submitted information, we agree that the portions of the submitted documents that consist of answers to questions concerning criminal convictions constitute confidential information as they relate to the competence of an applicant. *See id.* Accordingly, we conclude that the department must withhold most of the information that you have marked under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code. We note, however, that the document titled “Criminal History Check HCSSA Licensure” does not contain any criminal history information and, therefore, must be released to the requestor, except as discussed below.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 56.001 of the Occupations Code.

Section 56.001 provides:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. Based on your arguments and our review of the submitted information, we conclude the department must withhold most of the social security numbers that are highlighted within the submitted information pursuant to section 552.101 in conjunction with section 56.001 of the Occupations Code. However, we note that since the requestor has a special right of access to her own social security number, the department may not withhold this number under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. *See Gov’t Code § 552.023 (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests).*<sup>2</sup>

In summary, with the exception of the document titled “Criminal History Check HCSSA Licensure,” the department must withhold the remaining criminal history information highlighted by the department pursuant to section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code. Other than the requestor’s social security number, the department must also withhold the highlighted social security numbers contained within the submitted information pursuant to section 552.101 in

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<sup>2</sup> Because we base our ruling on section 552.101 of the Government Code in conjunction with sections 142.004 of the Health and Safety Code and 56.001 of the Occupations Code, we need not address your remaining arguments.

conjunction with section 56.001 of the Occupations Code. The department must release to the requestor the remaining submitted information that previously has not been 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. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

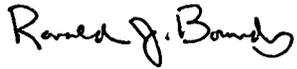
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 190439

Enc. Submitted documents

c: Ms. Rowena Martir  
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Baytown, Texas 77521  
(w/o enclosures)