



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2003

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

OR2003-8534

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# 191821.

The Texas Department of Human Services (the "department") received a request for information relating to a particular home and community support services agency. You inform us that the department has released most of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

You concede that the department has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is

voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

You inform us that the department received this request for information on August 19, 2003. You requested this decision on September 19, 2003. Thus, you did not request this decision within the ten-business-day period prescribed by section 552.301(b). Likewise, you did not timely comply with section 552.301(e). Therefore, the information at issue is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. You claim that the information that the department seeks to withhold is excepted from disclosure under section 552.101 of the Government Code. As a claim under this exception can provide a compelling reason for non-disclosure under section 552.302, we will consider your arguments.

Section 552.101 of the Government Code excepts from required public 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 have marked information that you claim is confidential under section 142.004 of the Health & Safety Code. 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.

Health & Safety Code § 142.004(d). Based on your representations and our review of the information at issue, we agree that the information that you have marked is confidential under section 142.004(d) of the Health and Safety Code and must be withheld from disclosure under section 552.101 of the Government Code.

You also contend that social security numbers contained in the submitted documents are confidential under section 552.101 in conjunction with section 231.302 of the Family Code. Section 231.302 provides in part:

(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) 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 under section 232.001 of the Family Code. *See* Fam. Code § 232.001(2) (defining "licensing authority" as department of state that issues license). You explain that, in this instance, release of the submitted social security numbers would not be for a permitted purpose under section 231.302(e) of the Family Code. *See id.* § 231.302(e). Based on your representations, we agree that the department must withhold the social security numbers that you have marked under section 552.101 of the Government Code in conjunction with section 231.302(e) of the Family Code.¹

In summary: (1) the department must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code; and (2) the department also must withhold the marked social security numbers under section 552.101 in conjunction with section 231.302(e) of the Family Code. The rest of the submitted 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

¹Because we resolve this aspect of your request for this decision under section 231.302 of the Family Code, we need not address your other arguments with regard to these social security numbers.

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).

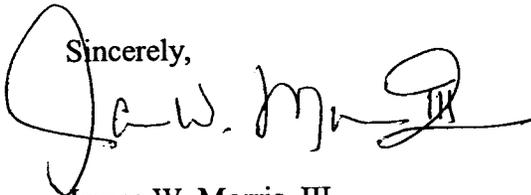
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized initial 'J' and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 191821

Enc: Submitted documents

c: Ms. Gloria Shumake
15302 Springs Land
San Antonio, Texas 78247
(w/o enclosures)