



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 22, 2009

Mr. Christopher C. Lopez  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2009-15037

Dear Mr. Lopez:

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# 359055 (DSHS No. O16070-2009).

The Texas Department of State Health Services (the "department") received a request for information pertaining to the selection of candidates for a specified position. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). The information at issue is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision

No. 630 (1994). This statutory presumption can generally be overcome when 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). Because sections 552.101, 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons for non-disclosure, we will consider the applicability of these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a); *see id.* § 611.001 (defining "patient" and "professional"). We have marked mental health records that the department must withhold under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.<sup>1</sup>

You have marked a portion of the remaining information under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the department must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. We note that the information you have marked and the additional information we have marked under section 552.117 of the Government Code consists of the personal information of department job applicants. You do not inform us that any of these applicants were hired by the department. Therefore, we must rule conditionally. If an applicant who was hired by the department made a timely election under section 552.024, the department must withhold that applicant's marked information under section 552.117(a)(1) of the

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Government Code. However, the department may not withhold this information under section 552.117 if the applicant was not hired or if a timely election was not made under section 552.024.<sup>2</sup>

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a). Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses you have marked are not of types specifically excluded by section 552.137(c) of the Government Code. In addition, you state the department has not received consent for the release of the marked e-mail addresses. Therefore, the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. To the extent an applicant who was hired by the department made a timely election under section 552.024, the department must withhold that applicant’s marked information under section 552.117(a)(1) of the Government Code. The department must also withhold the information we marked under section 552.130 of the Government Code and the information you marked under section 552.137 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>2</sup>Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "M Entsminger", with a long horizontal stroke extending to the right.

Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 359055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)