PRIVATE SECURITY BUREAU

Opinions Issued in Response to Questions from Industry & Public
February 2006 through May 2009

These opinions are merely advisory guidelines intended to inform the public and the regulated community of the Bureau's position and to afford an opportunity to licensees for voluntary compliance. They are not binding on the Bureau or any other law enforcement agency, and should not be relied on as authority in support of or defense against any enforcement action. They are subject to modification at the Bureau's discretion.

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Alarm System Installation by Builders, and “Pre-Wiring” Feb. 15, 2008

This is in response to a request for clarification of the Bureau’s interpretation of Section 1702.328(b) the Private Security Act. Subsection (b) of Section 1702.328 addresses the installation of alarm systems by builders, (residential or commercial) during construction. This provision provides in relevant part:

> (2) a person in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:
>
> (A) the person is a party to a contract that provides that:
>
> (i) the installation will be performed under the direct supervision of, and inspected and certified by, a person licensed to install and certify the alarm or detection device; and
>
> (ii) the license holder assumes full responsibility for the installation of the alarm or detection device; and
>
> (B) the person does not service or maintain alarm systems, electronic access control devices, locks, or detection devices;

This provision allows a builder to install burglar alarm or detection devices under certain limited conditions, perhaps the most important of which is that the installation must be supervised and inspected by a licensed alarm installer. The builder’s contract must specify that the installation is being performed under these circumstances, and it must provide that the licensee assumes responsibility for the installation. The Bureau would also interpret this provision as requiring that the licensee be identified in the contract.

The Bureau would like to take this opportunity to address a related issue, that of "pre-wiring" for alarm systems. There has been some confusion within the industry regarding whether the installation of electrical wiring that may be utilized by an alarm system constitutes part of that system for purposes of regulation. One source of the confusion is the statute's use of the term "wiring" in the definition of 'detection device.' TEX. OCC. CODE §1702.002(6).

It is the Bureau's position that only the low-voltage wiring that is essential and unique to the alarm system constitutes 'wiring' for purposes of Section 1702.002(6). The result is that a license is required for the installation of electrical wiring that would not exist but for the alarm system, and which is not merely associated with the power supply to the system.

Alarm Sales and Municipal Permits January 13, 2009

Alarm systems company licensed under Chapter 1702 of the Occupations Code (the Private Security Act), and their employees who are registered as alarm system sales persons, are exempt from any municipal or local permitting requirements. Section 1702.134(a) of the Private Security Act specifically provides that "[a] license holder or an employee of a license holder is not required to obtain an authorization, permit, franchise, or license from, pay another fee or franchise tax to, or post a bond in a municipality, county, or other political subdivision of this state to engage in business or perform a service authorized under this chapter." TEX. OCC.CODE §1702.134(a). The Bureau would interpret this provision as prohibiting such practices by municipalities or other local governmental entities. It should be noted that neither this provision nor this opinion is limited to alarm system sales, but is generally applicable to all regulated industries.

Alarm User Permit Number & City of Dallas Form August 8, 2006

The Bureau was asked to clarify its interpretation of Section 1702.286(b) of the Texas Occupations Code, which requires the disclosure to the municipality of specific information involving the alarm system and the installer. The form employed by the City of Dallas also requires that the installer provide the site-owner's "permit number." Apparently this has created confusion among alarm installers, because this requirement is not listed in Section 1702.286(b). Further, because the permit number is issued to the citizen (end-user), not the installer, there have been compliance problems for the installers.

The Private Security Bureau granted permission to the City of Dallas to use the form in question, for the sole reason that the form required the information outlined in Section 1702.286(b). However, the alarm industry should understand that *the permit number is not a requirement of Chapter 1702*, *and the Bureau will not seek disciplinary action for any failure to comply with the City's requirement*. Ideally, the form would reflect such a disclaimer.

The City's request for the permit number derives from the Dallas City Code's requirement that the installer confirm that a valid alarm permit has been issued to the site-owner. *See* DALLAS CITY CODE §15C-7.1(a). While the City is prohibited from requiring any additional permits or authorizations of the installer, the alarm permit is required of the site-owner. The requirement to provide the permit number would not appear to violate Chapter 1702. *See* TEX. OCC. CODE §1702.134(a).

Church Volunteer Security Patrol May 10, 2007

A volunteer security patrol made up of church members would generally require licensing under the provisions of Section 1702.108 or 1702.222, regardless of whether any compensation is received as a result of the activities. The only exception to licensing provided by the legislature for nonprofit and civic organizations is found in Section 1702.327, which applies specifically to nonprofit and civic organizations that employ peace officers under certain circumstances and would not be applicable here.

However, there is one exception to licensing under Chapter 1702 provided by the legislature that could arguably apply, which can be found in section 1702.323 ("Security Department of Private Business"). This exception would allow volunteers to provide security services *exclusively* for one church, as long as they do not carry firearms and as long as they do not wear "a uniform with any type of badge commonly associated with security personnel or law enforcement or a patch or apparel with 'security' on the patch or apparel." *See* TEX. OCC. CODE §1702.323(a) & (d)(2). Thus, the wearing of a uniform or any apparel containing the word "security" would subject them to the licensing requirements of the act.

Complaints or Suggestions regarding the Board's Administrative Rules

The Board's rules are the product of an exhaustive and public deliberative process. The rules are proposed, discussed, and voted on at the Board's public meetings, and are then published in the Texas Register (for purposes of receiving public comment) prior to adoption. However, if you have specific suggestions regarding how the requirements should be modified, please feel free to submit them to us or to the Board. You may also wish to address the Board at its next meeting.

Computer Forensics August 21, 2007

The computer forensics industry has requested clarification of the Private Security Bureau's position regarding whether the services commonly associated with computer forensics constitute those of an "investigations company" and are therefore services regulated under the Private Security Act (Chapter 1702 of the Occupations Code). It is hoped that the following will be of assistance.

First, the distinction between "computer forensics" and "data acquisition" is significant. We understand the term "computer forensics" to refer to the *analysis* of computer-based data, particularly hidden, temporary, deleted, protected or encrypted files, for the purpose of discovering information related (generally) to the causes of events or the conduct of persons. We would distinguish such a content-based analysis from the mere scanning, retrieval and reproduction of data associated with electronic discovery or litigation support services.

For example, when the service provider is charged with reviewing the client's computer-based data for evidence of employee malfeasance, and a report is produced that describes the computer-related activities of an employee, it has conducted an investigation and has therefore provided a regulated service. On the other hand, if the company simply collects and processes electronic data (whether in the form of hidden, deleted, encrypted files, or otherwise), and provides it to the client in a form that can then be reviewed and analyzed for content by others (such as by an attorney or an investigator), then no regulated service has been provided.

The Private Security Act construes an investigator as one who obtains information related to the "identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person; the location, disposition, or recovery of lost or stolen property; the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property; or for the purpose of securing evidence for use in court. Tex. Occ. Code §1702.104. Consequently, we would conclude that the provider of computer forensic services must be licensed as an investigator, insofar as the service involves the analysis of the data for the purposes described above.

With respect to the statutory reference to "securing evidence for use in court," we would suggest that the mere accumulation of data, or even the organization and cataloging of data for discovery purposes, is not a regulated service. Rather, in this context, the Bureau would interpret the reference to "evidence" as referring to the *report* of the computer forensic examiner, not the data itself. The acquisition of the data, for evidentiary purposes, precedes the analysis by the computer forensic examiner, insofar as it is raw and unanalyzed.[1] The mere collection and organization of the evidence into a form that can be reviewed and analyzed by others is not the "securing of evidence" contemplated by the statute.

This analysis is consistent with the language of HB 2833 (Tex. Leg. 80th Session), which amends Section 1702.104. The amendment confirms that the "information" referred to in the statute "includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public."

Computer Network Vulnerability Testing Firms January 15, 2008

This opinion amends the previous opinion issued in June of 2007. The question posed was whether network vulnerability testing firms must be licensed under the Private Security Act, Chapter 1702 of the Texas Occupations Code ("the Act"). Such companies typically conduct:

(1) Scans of a computer networks to determine whether there is internet vulnerability or other external risk to the internal network;

(2) Sequential "dial ups" of internal phone numbers to assess potential access;

(3) Risk assessment and analysis on all desktop computers connected to the network;

(4) Notification of any new security threats and required action.

Section 1702.226 of the Occupations Code provides in relevant part, that "[a]n individual acts as a private security consultant for purposes of this chapter if the individual consults, advises, trains, or specifies or recommends products, services, methods, or procedures in the security loss prevention industry." TEX. OCC. CODE §1702.226 (1).

However, while the Bureau regulates consultants in the "security industry or loss prevention industry," these latter phrase is not explicitly defined in the statute. It is therefore necessary to look to the rest of the statute in order to understand to which services the private security consultant's licensure requirement applies.

[1] It may well be that the hardware on which the data exists is itself the product of an investigation, but that is a separate question.

It is reasonable to consider those industries otherwise regulated by the Private Security Act as reflecting the scope of the phrase "security industry or loss prevention industry." In other words, the definitions are implied by those services that are regulated by the statute, *viz.*, security guards, locksmiths, alarm system installers and monitors, and private investigators, and *not* software designers, installers or suppliers.

Thus, the industries that are directly regulated are the same industries about which one cannot consult without a license. Because the Private Security Bureau does not regulate software designers, installers, or suppliers, it also does not regulate those who provide consulting services related to computer network security.

Computer Repair & Technical Assistance Services October 18, 2007

Computer repair or support services should be aware that if they offer to perform investigative services, such as assisting a customer with solving a computer-related crime, they must be licensed as investigators. The review of computer data for the purpose of investigating potential criminal or civil matters is a regulated activity under Chapter 1702 of the Texas Occupations Code, as is offering to perform such services. Section 1702.102 provides as follows:

§1702.104. Investigations Company

(a) A person acts as an investigations company for the purposes of this chapter if the person:

(1) engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to:

(A) crime or wrongs done or threatened against a state or the United States;

(B) the identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;

(C) the location, disposition, or recovery of lost or stolen property; or

(D) the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property;

(2) engages in the business of securing, or accepts employment to secure, evidence for use before a court, board, officer, or investigating committee;

(3) engages in the business of securing, or accepts employment to secure, the electronic tracking of the location of an individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(4) engages in the business of protecting, or accepts employment to protect, an individual from bodily harm through the use of a personal protection officer.

(b) For purposes of subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public.

Please be aware that providing or offering to provide a regulated service without a license is a criminal offense. TEX. OCC. CODE §§1702.101, 1702.388. Employment of an unlicensed individual who is required to be licensed is also a criminal offense. TEX. OCC. CODE §1702.386.

Deputy Sheriffs' Exemption from Private Security Act June 2008

As reflected in the recent Attorney General's Opinion on this subject (GA-0465), and as the Bureau interprets Section 1702.322 (1)(D) of the Occupations Code, it is the *Sheriff* who designates individuals as deputies and who is best situated to determine the individual's full-time employment status as a peace officer.

As noted in the Attorney General's opinion (GA-0465), the Sheriff defines who are deputy sheriffs – there is no statutory definition. The issue "depends upon the nature and terms of the individual's employment and *how the employer views and treats the position*." *Id*., at 3. Section 152.071 of the Local Government Code gives the sheriff the power to define those duties. *Id*. By certifying that they are deputy sheriffs, the Sheriff would, by definition, be certifying that they are peace officers (based on Article 2.12).

The remaining issue would then be whether they are employed at least 32 hours a week in their capacity as deputy sheriffs. If the Sheriff is unable to provide PSB with a determination of how these positions are understood, we will have to base our assessment of whether the individuals are exempt from Chapter 1702 on other verifiable facts and records, such as the job titles reflected in the county's employment records.

Therefore, if the Sheriff will certify that certain named individuals work as peace officers (as defined by Art. 2.12 of the Code of Criminal Procedure) on the average of at least 32 hours a week, are compensated by the county at least at the minimum wage, and are entitled to all employee benefits offered to a peace officer by the county, PSB would consider such individuals exempt from Chapter 1702 for purposes of off-duty employment in otherwise regulated positions.

The officers should understand, however, that this in no way limits the authority of other law enforcement agencies to interpret or enforce Chapter 1702 as may be deemed appropriate.

Document Examiners June 2008

We were asked to clarify whether Document Examiners must be licensed as private investigators, pursuant to Section 1702.104.

The review, analysis, or comparison of documents, *per se*, is not "investigative" for purposes of the Private Security Act. The examination of documents constitutes the provision of investigative services only when information is to be obtained on a specific (known) person.

For instance, a general or theoretical conclusion, such as "whoever wrote this is going to commit suicide", would not constitute "information regarding a specific person". Whereas, if the examiner is told "these are the documents supposedly signed by Mr. S -- find out who really signed them, *or* tell me what you can about Mr. S's emotional state, etc.," such matters would constitute an investigation.

Electronic Access Control Systems that Record Data *Revised* April, 2009

Section 1702.002 (6-a)(B) of the Act provides that the device is *not* an electronic access control device "if the operator or accessory is used only to activate the gate or door and is not connected

to an alarm system." A question has been raised regarding the meaning of "connected to an alarm system," and specifically whether the connection to a computer or data processor (for any purpose) implies that the installation of the device is a regulated service.

The statute provides that:

> (1) "Alarm system" means:
>
> (A) electronic equipment and devices designed to detect or signal:
>
> (i) an unauthorized entry or attempted entry of a person or object into a residence, business, or area monitored by the system; or
>
> (ii) the occurrence of a robbery or other emergency;
>
> **(B) electronic equipment and devices using a computer or data processor designed to control the access of a person, vehicle, or object through a door, gate, or entrance** into the controlled area of a residence or business; or
>
> (C) a television camera or still camera system that:
>
> (i) records or archives images of property or individuals in a public or private area of a residence or business; or
>
> (ii) is monitored by security personnel or services.

Of specific concern is part (B) of the definition, as it has been suggested that merely being connected to a computer or data processor is sufficient to bring the device within the definition of 'alarm system' and therefore within the regulatory scope of the Act. However, **the Bureau understands this reference to 'alarm system' to refer to a computer or data processor that records or archives any data relating to the user of the device, such as the voice, visual image, or other identifying information.**

This interpretation is based in part on the statutory language and the context in which the reference to computers or data processors occurs. First, the reference to computers occurs in one of three various definitions of alarm systems, the other two being associated with burglar alarms and camera surveillance systems. As these latter systems necessarily are concerned with the security of personnel or property, it is reasonable to interpret the reference to computers or data processors as being limited to those devices that would similarly involve security-related matters, and specifically those that retain security-related information. The mere retention of statistical data relating to the use of the device does not appear to be related to security. It is, therefore, unlikely that the legislature intended to include all computers or data processors within the definition of 'alarm system.'

This understanding is supported as well by the bill author's Statement of Intent as to this specific subsection:

> S.B. 1252 in the 78th Legislature, Regular Session, 2003, amended the Occupations Code to reflect advances in security alarm system technology. This legislation created unintended consequences affecting the electronic access control industry. Ultimately, some aspects of door and access machinery unintentionally came under regulation of the Private Security Bureau (PSB).

> H.B. 3140 amends the Occupation Code to provide an exemption from private security regulation for a manufacturer, distributor, or installer of an electronic control device that operates for the sole purpose of providing convenient and restricted access through a garage door or gate, such as an automatic garage opener or automatic gate for a private entrance. H.B. 3140 clarifies the scope of the PSB's regulation in the security area.

Statement of Intent, HB 3140 (Tex. Leg. 79th Reg. 2005). As the parking garage ticket-issuing machine and accompanying data processor operates for the sole purpose of providing convenient and restricted access through a garage door or gate, such devices are not within the scope of Private Security Act.

On the other hand, and for the above reasons, the Bureau interprets **equipment that monitors or records data relating to the *user* of an access device as an "electronic access control device,"** as defined in Section 1702.002 (6a). Consequently, a license is required for the installation of such equipment.

Expert Witnesses & Licensure as Private Investigators Revised January 15, 2008

The question was asked whether one must obtain a license as a private investigator in order to provide testimony as an expert witness in a Texas court of law. The answer depends entirely on the nature of the work done in preparation for testifying.

Section 1702.130 of the Texas Occupations Code defines an investigator as one who, among other things, "engages in the business of securing, or accepts employment to secure, evidence for use before a court…." However, the mere fact that a person is testifying, even as an expert, is not dispositive, since the proposed testimony might not be based on an investigation. For instance, the review of evidence exclusively provided or obtained by licensed investigators, or testimony in court related to such evidence, does not require licensure. Such review would not constitute "securing evidence," but rather the review of previously secured evidence. The Bureau would suggest that the "evidence" in question must be the result of an investigation. However, individuals who conduct an investigation in order to secure evidence for use while testifying in court as an expert witness would be required by Section 1702.130 to obtain a license.

Federal Contractors and Private Security Licensure January 13, 2008

The Private Security Bureau is of the opinion that the licensing and regulatory requirements of the Private Security Act do not apply to providers of otherwise regulated security services (as well as their employees and independent contractors) while under contract with the federal government to provide such services in the State of Texas. This would include, for instance, those who contract with that Federal Emergency Management Administration or Federal Protective Services to provide security services in response to disasters or other emergencies.

This opinion is based on opinions issued by the U.S. Supreme Court and Courts of Appeals, and the Texas Attorney General. *See Miller Inc. v. Arkansas*, 352 U.S. 187, 190 (1956); *United States v. Virginia*, 139 F.3d 984, 987-88 (4th Cir. 1998); *Taylor v. United States*, 821 F.2d 1428, 1431-32 (9th Cir. 1987); *see also* TEX. ATTORNEY GENERAL OPINION JC-0390 (2001).

Fire & Safety Watch Services September 7, 2007

The question has arisen regarding whether the providers of fire watch and safety watch services must be licensed under the Private Security Act, Chapter 1702 of the Texas Occupations Code ("the Act"). It has been suggested that the services of fire and safety officers are arguably within the Act's terms, insofar as the providers of such services may prevent fire; prevent, observe, or detect unauthorized activity on private property; protect individuals from bodily harm; or perform similar functions. TEX. OCC. CODE §1702.108.

The crux of the matter appears to involve the phrase "prevent fire" in the above list. We believe that the legislature meant for that phrase to be interpreted in the context of the surrounding guard-related terms rather than to be taken in isolation. When so interpreted, an individual who watches over property to ensure against arson is "preventing fire," just as he or she might be "preventing theft," whereas one whose general purpose is to ensure compliance with safety codes is not "preventing fire" for purposes of the Act.

In one particular case, for instance, the "fire watch" officer is charged with maintaining safe conditions in the workplace and extinguishing fires when feasible. The "safety watch" officers are charged with controlling access, but only of company personnel, not the public.

However the conclusion might be otherwise were the officers to perform "double-duty" as it were, such as controlling ingress and egress to the facility or patrolling the site for the purpose of detecting or preventing unauthorized activity (such as theft or trespass).

Another issue could be the nature of the officers' purported authority over the employees and the public. If, for instance, these individuals were to impersonate security officers with the intent of inducing others to submit to their pretended authority, or to rely on their pretended acts of as security officers, they could be subject to criminal prosecution under Section 1702.3875 of the Act.

Finally, if these fire and safety officers wear uniforms that are intended to or are likely to create the impression that they are performing security services, they would be subject to the Act. *See* HB 2833, effective Sept. 1, 2007, amending Section 1702.323(d).

The analysis is necessarily fact-specific. There may very well be some providers of "fire and safety watch services" that are regulated by the Act. But based on the general descriptions so far reviewed, it appears that they are not so regulated.

Guard Dog Company License and the Use of Dogs for Regulated Services May 11, 2009

Section 1702.109, Guard Dog Company, provides that:

> A person acts as a guard dog company for the purposes of this chapter if the person places, rents, sells, or trains a dog used to:
>
> (1) protect an individual or property; or
> (2) conduct an investigation.

The question has been asked whether one who uses a dog to perform guard services or to conduct an investigation must have a Guard Dog Company license, in addition to or in lieu of a Guard Company or Private Investigators' license.

The above provision clearly contemplates a distinction between the *use* of the dog and the training, sale or placement of the animal. And while "place" may be ambiguous, in this context it can only mean "*the assignment or PLACEMENT of the animal to the care of another*." This comports with the meanings of the other terms: "rent", "sell", or "train."

It is the *use* to which the dog is put that determines the type of license required. In other words, it is what the handler is doing with the dog that is or is not regulated. The fact that a dog is used to facilitate the activity is not relevant to the analysis. The person might be using the dog to conduct an investigation, such as searching for drugs, bombs, or persons, in which case the person would need to be licensed as an investigator. Alternatively, the person might use the dog to guard or assist with the guarding of property, in which case the person would need to be registered as a security guard.

Unless the person is involved in the training, sale, or placement of the animal, a Guard Dog Company license is not required.

Governmental Entities November 11, 2007

The question was asked whether a municipality or other political subdivision of the state of Texas would be required to obtain a license, if the entity were to provide services that would otherwise be regulated under the Private Security Act, Chapter 1702 of the Texas Occupations Code ("the Act").

As a general statement and in the absence of specific factual details, such entities must be licensed if they are operating as providers of a regulated service, i.e., if they are engaged in a business activity for which a license is required…." TEX. OCC. CODE §§ 1702.101; 1702.102. Governmental entities are not exempt from the licensure requirements of the Act.

It is necessary, however, to distinguish such circumstances from those in which the entity is hiring guards to provide security for the entity itself, or performing investigations on its own behalf, in which case the entity could be acting as a "security department of a private business." *See* §1702.182, and compare with §1702.108. The distinguishing factor is the provision of services to *others*.

"Heir-finders" and Investigations Related To Unclaimed Accounts December 5, 2006

Clarification was sought regarding whether a company's activities are governed by the Bureau's new rule, §35.242. Specifically, we were asked whether the rule applies only to the location or retrieval of property that is in *state* custody.

It is true that the rule was intended to address those who search for and retrieve property that is in state custody. However, its purpose was only to *clarify* the statute's application to those who conduct such investigations. The more important issue is the application of Chapter 1702 of the Occupations Code generally. The statute specifically regulates investigators and investigations companies, and the activities described would appear to fit the statutory definition of

investigations. Section 1702.104 provides, in relevant part, that "a person acts as an investigations company for the purposes of this chapter if the person engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to … the location, disposition, or recovery of lost or stolen property." §1702.104 TEX. OCC. CODE.

Internet-Based Remote Monitoring Systems August 24, 2006

Regarding the regulation of the marketing and selling of remote monitoring products and services that enable a homeowner to monitor his or her home through the internet: These products appear to meet the statutory definition of "alarm system." *See* TEX. OCC. CODE §1702.002(1)(C)(i). However, it would also appear that the exemption of Section 1702.328(4) is applicable. The provider of such services or equipment need not be licensed under the Private Security Act. *Compare* opinions on "Network Video Systems as 'Alarm Systems", and "Vehicular Video Monitoring Systems," below.

§1702.328(4) exempts from Chapter 1702 "a person who sells exclusively by e-commerce, over the counter transactions, or mail order, alarm systems, electronic access control devices, locks, or detection devices.

Litigation Support & Document Retrieval Industry July 26, 2007

This is in response to a request for an opinion letter regarding whether the changes to Section 1702.104 affected by House Bill 2833 apply to the above-referenced businesses. The concern was with the following language, added as subsection (b) to 1702.104:

> For purposes of subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public.

Specifically, the question was asked whether this subsection would apply to the provision of "electronic data discovery" services to the legal and corporate community, such that a license would be required under the Private Security Act (Chapter 1702 of the Texas Occupations Code).

Of course, the phrase 'electronic data discovery' encompasses many activities, some of which may require licensure. However, if:

1. The company does not obtain or secure data by way of an investigative analysis;
2. Does not analyze or review the content of the data;
3. Processes the data (provided by others) in order to create a database that can be searched by the lawyer/clients; and/or
4. Reproduce or retrieve the documents or images upon request of the clients;

Then it would appear that the company is not engaging in activities for which a private investigations company license is required.

Management of Multiple Companies May 31, 2007

The Bureau was asked whether an exception can be made to Administrative Rule 35.1(13)'s limitation on the number of companies a Qualified Manager may manage.

The rule limits to three the number of companies that may be managed by a single individual. *See* 37 TEX. ADMIN. CODE, PT 1, §35.1(13). The underlying policy is simply that it is unreasonable to believe that a single individual can manage more than three security-related enterprises in a manner sufficient to ensure that the companies and all supervised and regulated individuals are complying with the Private Security Act and the Board's administrative rules. The rule does not provide the Bureau authority to make exceptions on a case by case basis.

Therefore, the Bureau can approve licenses for three companies with a single individual as the Qualified Manager; however, before an additional company license can be approved, an application for an additional Qualified Manager must be submitted.

"Mitigation Specialists" as Private Investigators Feb. 11, 2008

This is in response to a request for an opinion regarding the application of the Private Security Act to mitigation specialists. The Bureau was asked whether those who research the life histories of the criminally accused by interviewing family members or teachers, or reviewing educational, medical, and criminal records, for purposes of an argument or testimony in court relating to the appropriate punishment, must be licensed as private investigators.

The Private Security Act describes an investigator as one who obtains information related to the "identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person; the location, disposition, or recovery of lost or stolen property; the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property; or for the purpose of securing evidence for use in court. TEX. OCC. CODE §1702.104. Based on the available description of services provided by "mitigation specialists," we would conclude that the provider of such services must be licensed as an investigator.

It has been suggested that the exemption provided in Section 1702.324(b)(4) (of the Private Security Act) may apply to such services. However, we would interpret that provision as applying only to *pre-employment* testing or interview services. It has also been suggested that the attorney exemption of Section 1702.324(b)(9) might apply to mitigation service providers. However, as interpreted by the Attorney General, that provision applies only to *employees* of the attorney who are working under the attorney's direct supervision and are employed by the attorney in connection with the attorney's legal practice. *See* A.G.Opinion GA 0275. That exemption does not appear to be applicable, based on the information available.

Municipal Red-Light Camera Systems and the Private Security Act January 13, 2009

The Private Security Bureau of the Texas Department of Public Safety does not interpret Chapter 1702 of the Occupations Code (the "Private Security Act") as requiring those who assist a municipality with the administration of a photographic traffic signal enforcement system to obtain licenses as private investigators.

Photographic traffic signal enforcement systems are operated for the express purpose of detecting a violation or suspected violation of a traffic-control signal. The Private Security Act exempts photographs taken for criminal justice purposes on behalf of a governmental entity. In addition, such a system is authorized by Chapter 707, Transportation Code, and Section 707.003 of that Code specifically allows a municipality to contract for any aspect of the system.

While Section 1702.104(a)(2) of the Private Security Act does state that a person acts as an investigations company if the person engages in the business of securing "evidence for use before a court, board, officer, or investigating committee," the photographic traffic signal enforcement systems with which we are familiar are operated and overseen by the municipalities, not by the contractors. The contractors' activities are generally ministerial, and are performed at the direction of city employees. Thus the municipalities are the entities that "secure evidence" for use at hearings associated with the photographic traffic signal enforcement system, and as governmental entities, they are exempt from the licensing requirement.

For these reasons, we do not believe that the activities of the contractors associated with municipalities' photographic traffic signal enforcement systems require licensure as private investigators under the Private Security Act. This determination is based on our understanding of the most common contractual arrangements and may not be applicable to all such contracts between governmental entities and private vendors.

Network Video Systems as "Alarm Systems" February 23, 2006

A company that sells and installs cameras that transmit or store images over a computer network, fits within Chapter 1702's definition of 'alarm system,' and the installer of such equipment would meet the definition of 'alarm systems company.' *See* TEX. OCC. CODE §§1702.002 and 1702.105. This would include those who set up and/or monitor video surveillance camera trailers systems.

Oil Field Guards May 11, 2009

Those persons who contract to provide guard services to oil field drilling operations must be licensed as guard companies, and employees of such contractors must be registered as security officers.

Section 1702.108, Guard Company, provides that:

> A person acts as a guard company for the purposes of this chapter if the person employs an individual described by Section 1702.323(d) or engages in the business of or undertakes to provide a private watchman, guard, or street patrol service on a contractual basis for another person to:
>
> (1) *prevent entry*, larceny, vandalism, abuse, fire, or *trespass on private property*;
>
> (2) *prevent, observe, or detect unauthorized activity on private property*;
>
> (3) *control, regulate, or direct the movement of the public*, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required *to ensure the protection of property;*
>
> (4) protect an individual from bodily harm including through the use of a personal protection officer; or

(5) perform a function similar to a function listed in this section.

Some service providers have suggested that this service is not regulated if the "guards" do not wear security uniforms and do not come into contact with the public. However, neither of these factors is relevant to the analysis. These factors are relevant only to whether the exemption provided in Section 1702.323 is applicable, which governs employees who are providing security "in connection with the affairs of the employer." The "affairs of the employer" are those matters related to the employer's internal operations or protection of the employer's own property, not the contractual, business affairs of the employer. At issue is whether the person has contracted to perform the services of a guard company, as defined above, or is employed by a guard company to perform such services.

On the other hand, if access is not controlled, the person is merely recording information regarding who enters or leaves the premises and does not perform any regulated activities (as described in Section 1702.108), then no license or registration is required. This analysis is necessarily fact specific.

Peace Officer Exemption & "Direct Employment" January 13, 2009

This letter concerns the scope of the peace officer exemption provided in the Private Security Act. *See* TEX. OCC. CODE §1702.322. The question has been raised as to whether the exemption applies to otherwise exempt officers who work *for* a guard company, rather than directly for the client.

The statute provides that the peace officer must be "employed in an employee-employer relationship or employed on an individual contractual basis." TEX. OCC. CODE §1702.322(1)(A). This condition is *not* satisfied where the officers are employed by the guard company, to perform services for a client. If the language of the exemption were interpreted as applying to such an arrangement, it would apply to *any* employment arrangement and the language of the statute would be meaningless. Instead, the Private Security Bureau interprets the peace officer exemption as applying *only* where the officer is employed *directly* by the client or recipient of the security service.

This interpretation is based on the above statutory language, and by an opinion issued by the Attorney General. *See* ATTY. GEN. OP. NO. DM-287. This Attorney General opinion *specifically* addressed the issue at hand, and concluded that the exemption applies only to a person who is employed in an employee-employer relationship or on an individual contractual basis ***directly with the security recipient, for the individual rendering of security services*.** ATTY. GEN. OP. NO. DM-287, at 3.

The statutory language at issue has not changed since that Attorney General opinion was issued, and no subsequent contrary opinion has been issued. The Bureau therefore has no basis for ignoring either the Attorney General's opinion or the express language of the statute.

Finally, by way of clarification, it should be noted that administrative rule 35.39(e) addresses the types of uniforms that may be worn by full-time peace officers while they are performing *regulated* services. The rule only applies to those officers who are *registered* with the Bureau

(though they would otherwise be exempt). It has no significance for those officers who *are* exempt and who are *not* registered, because the Bureau has no authority over such officers.

Based on the current language of the statute and the above-referenced Attorney General's opinion, the Bureau's interpretation accurately reflects the meaning of the statute: the statutory exemption for peace officers applies only to officers who work directly for the client or recipient of the services.

Peace Officers' Extra-Employment as Personal Protection Officers March 15, 2006

The question was asked whether full-time peace officers must be licensed by the Bureau in order to accept extra-employment as Personal Protection Officers. The Bureau is of the opinion that peace officers who meet the conditions of Section 1702.322, and who are, therefore, exempt from the licensing requirements of the statute, do *not* need to be licensed in order to perform the services of a Personal Protection Officer.

Under certain circumstances, Section 1702.322 exempts full-time peace officers from the Act. Of specific relevance to this question is the condition that the peace officers perform services as "a patrolman, *guard*, extra job coordinator, or watchman …." §1702.322(1) (emphasis added). An individual performs the services of a "guard" when he or she is employed to (among other things) "protect an individual from bodily harm including through the use of a *personal protection officer*." §1702.108(4) (emphasis added). Thus, the provision of personal protection services by a full-time peace officer is within the scope of Section 1702.322's exemption.

This interpretation is supported by the intent of Section 1702.322. The terms 'guard,' 'watchman,' and 'patrolman' are general references to activities for which peace officers are already trained, thus making licensing superfluous. The training requirements for Personal Protection Officers, as described in Section 1702.204, are exceeded by the current TCLEOSE requirements for peace officer training. Therefore, the purpose of the statute, i.e., the protection of the public safety, is served by this interpretation.

Repossession Agents & Locksmith Services October 17, 2006

Section 1702.324 (b)(3) of the Occupations Code exempts from Chapter 1702 those "who engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest."

It has been suggested by some members of the locksmith industry that the intent of this section was to allow repossession agents to recover property by making a key, without having to be licensed as locksmiths. However, our research indicates that this provision was actually added in the 1980's, well before the legislature contemplated the licensure of locksmiths (in 2003). There was apparently some concern that repossession activities were *investigative* in nature, and the exemption was enacted to exempt repossession agents from the licensure requirements for *investigators*.

With regard to repossession agents, the Bureau's position is that such agents may not perform locksmith services (as defined in Section 1702.1056) without a license. If the performance of their duties requires that they have a key made while repossessing property, then the agents must either obtain a license or hire a locksmith.

Reserve Officer's Uniforms June 27, 2006

On June 8, 2006, the Attorney General issued its opinion on the question of whether a reserve peace officer may wear his or her official uniform and display the insignia of an official law enforcement agency while working as a private security guard. The Attorney General's opinion is that Section 1702.130 of the Occupations Code prohibits the wearing of such a uniform under such circumstances.

Following the issuance of that opinion, we were asked whether a reserve officer can wear a uniform that shows no identifying agency, but that indicates that the wearer is a "peace officer."

The use of the phrase "peace officer" is prohibited. Section 1702.130 specifically prohibits the use of a uniform or insignia that gives the impression that the wearer is connected with the federal or state government, or with a political subdivision of a state government. Article 2.12 of the Code of Criminal Procedure provides a list of those who are "peace officers," and all of those listed are connected with state or local governments.

Section 1702.130 provides that non-exempt police officers generally are prohibited from wearing their police uniforms while performing off-duty security services for anyone other than their employing law enforcement agency.

Peace Officer's Uniforms & Security Guard Services June 22, 2006

We have been asked whether the above-discussed Attorney General opinion addresses *regular* officers who are less than full time. By its terms, the opinion is limited in its application to reserve officers. However, the Attorney General's arguments would appear to apply equally to regular part-time officers.

It is worth noting that Section 1702.130 does not refer to *reserve* officers at all. The general issue prompting the request for the Attorney General's opinion was whether 1702.130(b) was intended to refer to security guards who happen to work for a political subdivision, or whether it instead refers to peace officers who are working extra security jobs for other employers. The A.G. concluded that the first interpretation was correct. In other words, Section 1702.130(b)'s exception does not apply to peace officers at all, but rather to security guards.

The fact that the specific question presented (by the Harris County District Attorney) concerned *reserves* is secondary to the argument, despite the fact that the opinion disclaims any broader application. Neither the reasoning nor the conclusion of the Attorney General's opinion is dependent on whether the officers are reserves. The arguments on which the Attorney General's opinion rely support a more general conclusion, *viz.,* that <u>non-exempt police officers generally (not just reserves) are prohibited from wearing their police uniforms while performing off-duty security services for anyone other than their employing law enforcement agency</u>.

School District Employment of Private Security Guards August 31, 2006

This question concerns to the requirement of Section 37.081 of the Texas Education Code that *only* peace officers commissioned by a school district provide armed security services for the district, and the common practice of some districts of hiring private security officers, who are

commissioned by the Private Security Bureau but who are *not* peace officers, to provide armed security for the schools.

The latter arrangement is a contractual matter between the school district and the guards. The legality of the arrangement is a matter properly addressed to a private attorney, and perhaps the district attorney. The issue raised does not implicate Chapter 1702 or the authority of the Private Security Bureau.

A Governmental Letter of Authority issued by the Private Security Bureau to the school district does not authorize the district to engage in otherwise illegal activity, nor does it reflect a judgment on the part of the Bureau regarding the legality of any particular employment arrangement involving security officers.

"Sweeping" or Detection of Surveillance Devices December 11, 2007

The mere *detection* of surveillance devices, typically conducted by moving around the site with a hand-held receiver, does not constitute an investigation for purposes of Chapter 1702, and does not require a license.

However, the *retrieval* of the surveillance devices may implicate Section 1702.104(a)(2), and subject an individual to licensure under the Act. Unless the client is to be responsible for the retrieval, removal or disposal of the devices, a license may be required.

In addition, advising the client of any possible sources of the devices or how to identify the individuals who might have planted the devices may also implicate Section 1702.104(a)1).

Finally, advising the client as to how to prevent future installations or surveillance may constitute the provision of security consulting services, and subject the individual to the requirement of licensure under Section 1702.1045.

Traffic Control and the Private Security Act June 2008

This is in response to a request for written confirmation that the employment of off-duty peace officers for traffic control purposes does not implicate the Private Security Act, Chapter 1702 Texas Occupations Code. We were asked, specifically, whether part-time officers who are *not* otherwise exempt from the Private Security Act, could nevertheless perform traffic control functions without being licensed.

Traffic control, *per se*, is not a regulated function, pursuant to the definition of guard services provided in Section 1702.108 of the Occupations Code, and the Attorney General's Opinion GA-0008.

So long as the officers are only providing traffic control, and are not performing any security-related services, no license or registration is required under the Private Security Act.

Vehicle Unlocking Services under Advertisement Heading of "Locks & Locksmiths" August 30, 2006

The Department's Private Security Bureau has received complaints that some towing companies are advertising in the Yellow Pages or similar publications under the heading of "Locks & Locksmiths," or substantially similar headings. Such advertising is in violation of the Private Security Act, Chapter 1702 of the Texas Occupations Code.

Under Section 1702.1056 of the Occupations Code, "advertising services using the term 'locksmith,' constitutes "acting as a locksmith company." Such advertising by a person not licensed by the Private Security Bureau as a locksmith constitutes operating without a license, and is a violation of the Act. *See* TEX. OCC. CODE. §§1702.103; 1702.2225.

The violation of Chapter 1702 is a Class A misdemeanor. §1702.388. In addition to seeking criminal sanctions, the Bureau is authorized to file a civil lawsuit in Travis County against those who engage in unlicensed activity, and may seek a civil penalty of $1,000 per violation and costs associated with the bringing the lawsuit. *See* §§1702.381. The Bureau intends to pursue both criminal and civil prosecution in cases in which we determine that an advertising contract using the term "locksmith" has been executed by an unlicensed company, in violation of Chapter 1702.

The Bureau would emphasize that Chapter 1702 does not require licensing in order to operate a tow truck or to simply unlock a vehicle for the vehicle's owner. However, companies may not advertise such activities by using the term "locksmith".

In the event that the publisher of the advertisements insists on using the "Locks and Locksmiths" heading, to the exclusion of an additional heading for "Vehicle Lock-out Services," for instance, we would recommend the insertion of a disclaimer to the effect that the provider is **"***not a locksmith and is not licensed by the Private Security Bureau.***"**

Vehicular Video Monitoring Systems October 16, 2007

This is in response to a request for a written opinion regarding whether the providers of "vehicle monitoring" services must be licensed under the Private Security Act, Chapter 1702 of the Texas Occupations Code. The proposed services involve the sale and installation of video surveillance equipment in the client company's vehicles. In addition, the recorded images are reviewed for content and then transmitted to the client for appropriate action.

First, the sale and installation of such equipment clearly involves the sale and installation of an "alarm system," as defined in Section 1702.002(1)(C) of the Texas Occupations Code. That provision includes within the definition of alarm system, "a television camera or still camera system that (i) records or archives images of property or individuals in a public or private area of a residence or business; or (ii) is monitored by security personnel or services." TEX. OCC. CODE §1702.002(1)(C). Based on the description of the service to be provided, either one or both of subsections (i) or (ii) would apply, with the result that the system at issue would constitute an "alarm system," and a license to sell or install such a system would be required. *See* TEX. OCC. CODE §1702.105.

Secondly, the monitoring of the video images, or the subsequent review of the video recording, is also an activity regulated under the Private Security Act. Because the video is reviewed for

content, and specifically reviewed for "recordable events" that would be of interest to the employer, subsection (1) of Section 1702.102 is implicated. That subsection provides that a person acts as an investigations company if the person:

> (1) engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to:
>
> (A) crime or wrongs done or threatened against a state or the United States;
>
> (B) the identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;
>
> (C) the location, disposition, or recovery of lost or stolen property; or
>
> (D) the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property;

Presumably the "recordable events" are those that involve conduct on the part of employees that is either illegal or destructive of personal property. At the very least the videos are likely to be furnished to the client for the purpose of establishing the habits, efficiency, movement, location, transactions, or acts of the client's employees. TEX. OCC. CODE §1702.102 (1)(B).

Therefore, the proposed activities would require licensure as both an alarm sales and installation company, under Section 1702.105, and as an investigations company, under Section 1702.104. Any employees of the company who perform work related either to the sales or installation of the equipment in Texas, or the monitoring and review of the videos recorded in Texas, will need to be registered with the Bureau as well. *See* TEX. OCC. CODE §1702.221.

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