



PRIVATE SECURITY BUREAU

Recent Opinions Issued in Response to Questions from Industry & Public

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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, 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 Administrative Rules

Rules recommended by the Board 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, 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.

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.

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

June, 2007

This is in response to a request for an opinion regarding 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 network 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).

It would appear that the services described above are those of a private security consultant, insofar as the firms in question are consulting, advising, and recommending methods or procedures in the security industry. Moreover, the public policy underlying the Private Security Act is served by requiring licensure in this case, as these service providers have potential access to their clients’ confidential information.

Computer Repair & Technical Assistance Services

October, 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.

Electronic Access Control Systems that Record Data

October, 2007

Section 1702.002 (6-a)(B) 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.” However, the legislature intended for the phrase “used only” to exclude from the application of the exception any system that retains data on the use of the device, including logs related to ingress and egress.

Equipment that monitors or records data relating to the use of an access device constitutes an “electronic access control device,” as defined in Section 1702.002 (6-a). Consequently, a license is required for the installation of such equipment.

Expert Witnesses & Licensure as Private Investigators

September, 2006

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. For instance, the review of the evidence exclusively provided or obtained by licensed investigators, does not require licensure. 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...” Such review would not constitute “securing evidence,” but rather the review of previously secured evidence.

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.

As to the admissibility of the expert's testimony, this is a very different question from whether or not that expert must have a license in order to perform a service: the former is a matter for a judge and the applicable rules of evidence; the latter is a matter for a regulatory agency.

Fire & Safety Watch Services

September, 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.

“Heir-finders” and Investigations Related To Unclaimed Accounts December, 2006

Clarification was sought regarding whether a company’s activities are governed by the new administrative 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, 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.

§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, 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 the company:

1. 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. Reproduces or retrieves 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, 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.

Network Video Systems as "Alarm Systems"

February, 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 trailer systems.

Peace Officers' Extra Employment as Personal Protection Officers

March, 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, 2006

Section 1702.324 (b)(3) of the Occupations Code exempts from Chapter 1702 those “who are 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 1980s, 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 Officers’ Uniforms

June, 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 Officers’ Uniforms & Security Guard Services

June, 2006

We have been asked whether the above-discussed Attorney General opinion addresses *regular* officers who are employed 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 relies support a more general conclusion, *viz.*, that 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.

School District Employment of Private Security Guards

August, 2006

This question concerns 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.

Vehicle Unlocking Services under Advertisement Heading of “Locks & Locksmiths”

August, 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, 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.