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Supreme Court of Texas.
Samuel T. Jackson
v.
State Office of Administrative Hearings and Shelia Bailey Taylor in her
official capacity as Chief Administrative Law Judge, State Office of
Administrative Hearings.
No. 10-0002.

December 8, 2010.

Appearances:

Samuel T. Jackson pro se, for petitioner.
Brenda Loudermilk of the Office of the Attorney General for respondents.

Before:

Chief Justice Wallace B. Jefferson; Nathan L. Hecht, Dale Wainwright, David M. Medina, Paul W. Green, Phil Johnson, Don R. Willett, Eva M. Guzman, and Debra H. Lehrmann, Justices.

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CHIEF JUSTICE WALLACE B. JEFFERSON: The Court is ready to hear argument in the first matter, Jackson versus State Office of Administrative Hearings.

MARSHAL: May it please the Court, Mr. Jackson will present argument for petitioner. Petitioner has reserved eight minutes for rebuttal.

ORAL ARGUMENT OF SAMUEL T. JACKSON ON BEHALF OF THE PETITIONER

ATTORNEY SAMUEL JACKSON: Good morning. May it please this honorable Court, I am Samuel Jackson and I'm the pro se petitioner in this cause. I'm also a licensed attorney so that probably means that I've got a fool for a client and I trust the Court won't hold that against me. The case before us, Your Honors, represents an egregious encouraging on the rights to public access of the public access to court documents, specifically court opinions, court orders and court decisions. Ostensibly, the case involves the public's right of access to opinions and decisions rendered by the State Office of Administrative Hearings in cases involving the suspension of li-

censes for failure to pay child support. Realistically, this case affects the public access to a huge number of administrative and governmental documents. So this case goes far beyond the withholding of the [inaudible--soa] court orders and of their decisions.

JUSTICE NATHAN L. HECHT: Is there any administrative office like a clerk's office or any place that you can go to see a decision in one of these license suspension cases?

ATTORNEY SAMUEL JACKSON: No, Your Honor, these cases are considered closed to the public so there's no, according to the Attorney General, there's no access to them.

JUSTICE NATHAN L. HECHT: Does SOAH keep the records?

ATTORNEY SAMUEL JACKSON: Yes, they do. SOAH keeps records and the Attorney General's Child Support Division also maintains copies of these court orders and opinions.

CHIEF JUSTICE WALLACE B. JEFFERSON: Do you know in each of these cases who the lawyers were? Who the parties were and would it be possible to get any of that information from the participants?

ATTORNEY SAMUEL JACKSON: Your Honor, the request was made for all cases handled by SOAH regarding the suspension of licenses.

CHIEF JUSTICE WALLACE B. JEFFERSON: Well, if you were let's say the case is my case and SOAH issues a decision, I could go to the newspaper and say here's the decision, right? I mean I could release it. It's just SOAH that's not releasing it, correct?

ATTORNEY SAMUEL JACKSON: Your Honor, according to the argument by the State Office of Administrative Hearing, I don't believe that that information would be available through any source. The statute that the state claims actually prohibits them from distributing this information is found in Texas Family Code chapter 231.108 and that states, the statute basically says that all documents, all files, all records maintained by the Office of the Attorney General for the purpose of these child support cases is confidential. So their claim is that this statute is omnipotent. It protects this information regardless of the source, regardless of the form or regardless of the forum. So according to them, these documents are off limits completely for public discretion.

JUSTICE DALE WAINWRIGHT: SOAH argues that it's not a court. It would, of course, unheard of for any public court, district court, appellate court, this Court to say its orders and opinions are not public record but it says, SOAH says we're not a court. Does that affect your analysis?

ATTORNEY SAMUEL JACKSON: Not at all, Your Honor. The fact that SOAH is not a court does not negate the fact that they are a state agency and there is a statutory requirement, mandatory requirement from the state to provide specifically court orders, opinions and decisions for public inspection and it's under the Texas Administrative Procedures Act and that statute is mandatory. There are no exceptions to that statute and it basically says that the state agency shall make available for public inspection these court orders, these opinions and the decisions. The only place where that argument might have some relevance is at another rule of civil procedures.

JUSTICE DALE WAINWRIGHT: 76a?

ATTORNEY SAMUEL JACKSON: 76a does speak to court documents and I believe it restricts it to district and county courts and in that, of course, that rule requires that no opinions or decisions may be sealed under any circumstances. It doesn't allow them to be sealed. SOAH argues that since they're not a court, 76a does not apply to them, but I believe it does have relevance because if their argument prevails, that does affect other court documents. The district and county courts in this state also handle child courts would not be allowed to seal those records, but under the Attorney General's argument, they would since they are not a court.

JUSTICE EVA GUZMAN: Well under 76a, you can seal the records. You just have to have a proper showing. There is that potential out there on a proper showing.

ATTORNEY SAMUEL JACKSON: On court records, that's correct, Your Honor, but on decisions and opinions, no. The rule specifically states that these may not be sealed so they remain open to the public under all circumstances.

JUSTICE EVA GUZMAN: Of the records that you seek here, is there an aspect of those records that would be subject to sealing in an aspect that isn't?

ATTORNEY SAMUEL JACKSON: Not the records that I'm seeking. The information I'm seeking that I sought in the request were court orders, decisions and opinions. I did not request any additional items of the court orders.

JUSTICE EVA GUZMAN: And the court orders tend to be pretty thorough and contain other types of confidential information that you normally would not find in a traditional order in another type of case, isn't that usually the case?

ATTORNEY SAMUEL JACKSON: Your Honor, I don't believe so, with all due respect. The information that is contained in these orders and that would be contained in decisions is information that is directly obtained from the Attorney General's office, which, in turn, receives that information from court documents.

JUSTICE DEBRA LEHRMANN: May I ask you, how do you suggest that the office would deal with 231.108, which states that the agency may not release information on the physical location of a person if a protective order has been entered or there's reason to believe that the release of the information may result in physical or emotional harm. How do you suggest that would be dealt with?

ATTORNEY SAMUEL JACKSON: Well, it does not, again, affect the right of the public to the administration's decisions and opinions. We argue here, Your Honor, that section 231.108 does not have any application to the availability of court orders and decisions or opinions.

JUSTICE DEBRA LEHRMANN: So you're suggesting that that information shouldn't be redacted?

ATTORNEY SAMUEL JACKSON: It depends on the nature of the information. Now the statute seeks to protect the parent in this case from someone getting that information and causing some harm to that individual. Ordinarily that's the spouse or father of the children, but that is a very limited restriction and it does not apply to these cases. And the reason that I say that are twofold. One, the statute itself precludes application to the court orders and decisions maintained by soa. The language itself indicates that the prohibition is for records and files under this subchapter. That's subchapter 231.108 or subchapter 231. The documents that we see are a result of Family Code Section 232, an entirely different statute. So the state is making an attempt to apply the 231 requirements to a 232 proceeding and so I believe that the statute itself excludes application of 231.108 to the availability of court orders and decisions. The state contends, as I said, that this statute is omniscient and under the state's interpretation there, that would mean that the entire body of information that comes into the Attorney General's hands in pursuit of child support cases would be off limits to the public. They're claiming that the statute that says all files and all records for services provided under this subchapter includes everything that they get. So nothing that comes into the hands of the Attorney General for the purpose of child support enforcement would be unavailable and that includes any circumstances. Now here we're discussing the access to court documents, but application of this statute as they claim would deny access to any types of information whether there might be other types of information under 552.022, contracts, vouchers, any number of those 18 enumerated documents that are included in 552.002. So their entire argument is that nothing is available. Now--

JUSTICE DAVID M. MEDINA: What about the recovery of attorneys' fees? Recovery of attorneys' fees--

ATTORNEY SAMUEL JACKSON: Yes, sir.

JUSTICE DAVID M. MEDINA: For in this situation for someone represented?

ATTORNEY SAMUEL JACKSON: That, Justice Medina, I think is a little more difficult argument because this Court has given no guidance in this area and there have been no cases in point on whether or not a pro se attorney in PIA cases can get attorneys' fees. Now the state argues that the pro se attorney does not incur any fees and that is one of the requirements of the statute that they are entitled to reimbursement for fees incurred, attorneys' fees that are incurred during the proceeding. We argue, however, Judge, that, Justice, that costs are also available, not just attorneys' fees. Costs are available under the statute. Now if the Court determines that no attorneys' fees have been incurred, that does not mean that costs have not been incurred and I believe that any pro se attorney who involves himself in this type of litigations, you can see we're at the Supreme Court, so you can imagine the number of steps that have been generated prior to this appearance. That takes time. That takes time away from that attorney's own practice and it takes time away from other activities that he might become engaged.

CHIEF JUSTICE WALLACE B. JEFFERSON: Mr. Jackson, I see that your time has expired. Are there any other questions? We'll hear from you on rebuttal. The Court is now ready to hear argument from the respondents.

ATTORNEY SAMUEL JACKSON: Thank you.

MARSHAL: May it please the Court, Ms. Loudermilk will present the argument for the respondents.

ORAL ARGUMENT OF BRENDA LOUDERMILK ON BEHALF OF THE RESPONDENT

ATTORNEY BRENDA LOUDERMILK: Thank you. May it please the Court, Mr. Jackson is correct when he says that this case will probably go way beyond the administrative orders and decisions that he has requested and he's correct when SOAH and the Attorney General's office as their attorney say that the entire body of Title IV-D information is confidential under state and federal law. It is very clear section 231.108 says that all information in the hands of a Title IV-D agency, which the Attorney General is, and SOAH is acting under the contract between the two parties is a Title IV-D agency and federal law has mandated that if you participate in the child support enforcement program, then a Title IV-D agency has to maintain, collect the information, solely for Title IV-D purposes and release it only to authorized persons.

JUSTICE NATHAN L. HECHT: He's not asking for that. He's asking for the orders, the decisions and orders.

ATTORNEY BRENDA LOUDERMILK: Yes, sir, but the administrative orders are Title IV-D information. His request.

JUSTICE NATHAN L. HECHT: What information in the Title IV-D orders is confidential?

ATTORNEY BRENDA LOUDERMILK: All of it, Your Honor, because it relates--

JUSTICE NATHAN L. HECHT: That it occurred in soa, that's confidential?

ATTORNEY BRENDA LOUDERMILK: Section 231.108 says that all files and records of the Title IV services are confidential and that--

JUSTICE NATHAN L. HECHT: It seems kind of stretching it to say that it's a service to suspend your license.

ATTORNEY BRENDA LOUDERMILK: That is the tool. It is defined in 231.108 that enforcement and collection of child support is a service. That is the way, that is the federal scheme and that's the state scheme.

CHIEF JUSTICE WALLACE B. JEFFERSON: As we're talking here, a transcript is being made, a transcript is being made of the argument and part of what we're talking about is Title IV procedures and decisions. Is all of that confidential too?

ATTORNEY BRENDA LOUDERMILK: Not the procedures, Your Honor.

CHIEF JUSTICE WALLACE B. JEFFERSON: And any information that is in the order that even if it's of a public nature, that you say is confidential.

ATTORNEY BRENDA LOUDERMILK: It's not of a public nature under the statutes that we're talking about. The information that has been obtained and reflects what's in those orders was obtained through the Title IV-D process.

CHIEF JUSTICE WALLACE B. JEFFERSON: How is the public supposed to assure accountability of SOAH in these Title IV matters if they are excluded from viewing the documents, the orders and decisions?

ATTORNEY BRENDA LOUDERMILK: I'm not sure that the public has a role in that accountability. The legislature does. There are required reportings that in the Texas legislature has set out as well as the federal government.

CHIEF JUSTICE WALLACE B. JEFFERSON: So those decisions go to the legislature?

ATTORNEY BRENDA LOUDERMILK: No, they don't go to the legislature. They will, SOAH maintains the orders and decisions that it makes for its records. The entire case files go back to the Attorney General's office and then that information is maintained there.

JUSTICE DALE WAINWRIGHT: What information in the orders and opinions is sensitive, private, personal, sensitive information? Are there Social Security numbers in the orders?

ATTORNEY BRENDA LOUDERMILK: Yes, sir.

JUSTICE NATHAN L. HECHT: There are? There are none in the documents--

ATTORNEY BRENDA LOUDERMILK: Some of them may be. Maybe not in the--

JUSTICE NATHAN L. HECHT: In all the ones you sent us, there's not a Social Security number.

ATTORNEY BRENDA LOUDERMILK: The total count of--

JUSTICE NATHAN L. HECHT: Why do you say yes when they're not in there?

ATTORNEY BRENDA LOUDERMILK: Your Honor, I apologize. I thought I had looked through those and they could be in there, but there are--

JUSTICE NATHAN L. HECHT: It could be, but they're not. What other information is in here?

ATTORNEY BRENDA LOUDERMILK: Medical condition.

JUSTICE NATHAN L. HECHT: In one order?

ATTORNEY BRENDA LOUDERMILK: Living situation.

JUSTICE NATHAN L. HECHT: In one order?

ATTORNEY BRENDA LOUDERMILK: Those are representative samples, Your Honor.

JUSTICE NATHAN L. HECHT: Yes.

ATTORNEY BRENDA LOUDERMILK: There are a total of 128 decisions.

JUSTICE NATHAN L. HECHT: All right.

JUSTICE DALE WAINWRIGHT: Can sensitive information that could affect the safety of children or parents involved be redacted from orders and opinions?

ATTORNEY BRENDA LOUDERMILK: Mr. Jackson has asked for the entire order, not specific information.

JUSTICE DALE WAINWRIGHT: I understand.

ATTORNEY BRENDA LOUDERMILK: This Court might pursue that, the 231.108 and 42 U.S.C. 65426 doesn't contemplate parsing. The scope of those two statutes is any information relating to Title 4D.

JUSTICE DALE WAINWRIGHT: Practically, it would not be difficult to redact a home address of a child or some information that could be deemed putting at risk some person like a home address. Practically, it wouldn't be hard to redact that from 128 orders.

ATTORNEY BRENDA LOUDERMILK: That's true, Your Honor.

JUSTICE PHIL JOHNSON: I wonder why it would be necessary to put the home address of a child in an order suspending an adult's driver's license, for example. I mean you could do it. You could put it in there, but if the only purpose is to make these orders confidential, it seems like that that's counterproductive.

ATTORNEY BRENDA LOUDERMILK: I don't agree with, I don't disagree with you, Your Honor, in a representative sample I did not find any addresses in there.

JUSTICE PHIL JOHNSON: So I'm wondering if you're going to suspend a person's professional license or driver's license or whatever, why do you need medical information and addresses of children and things of that nature in there?

JUSTICE EVA GUZMAN: What types, well go ahead and answer him.

ATTORNEY BRENDA LOUDERMILK: I'm not sure the why. That is the background--

JUSTICE PHIL JOHNSON: I guess the question I'm asking is if we just, if SOAH or someone wants to keep things confidential, they can load it up with all kinds of confidential information, but why should that be the situation simply to keep these things confidential?

ATTORNEY BRENDA LOUDERMILK: Well, that's not the reason why that information is in there. It's maintained confidential because the way we read the statute requires us to do it or jeopardize the--

JUSTICE PHIL JOHNSON: The statute requires you to put that in an order?

ATTORNEY BRENDA LOUDERMILK: No, but it requires any information that is obtained through the Title IV-D program to be maintained confidential.

JUSTICE PHIL JOHNSON: Well let me ask, go ahead.

JUSTICE EVA GUZMAN: In some types of orders relating to child support enforcement, the trial courts make findings and, in fact, the family code sometimes requires certain findings to be contained in orders, findings that may be confidential. Are there any types of findings or conclusions of law that are made in these types of orders at issue?

ATTORNEY BRENDA LOUDERMILK: I don't, that are required?

JUSTICE EVA GUZMAN: Or that are typically made even though they may not be in your representative sample. You mentioned medical condition. Does the trial court make those types of findings and include them in the order, although normally that wouldn't be the case.

ATTORNEY BRENDA LOUDERMILK: One of the decisions that you will find in this is an order staying a suspension or vacating a suspension and there is more background information, findings of fact that support that suspension and that's where I at least saw there's more personal information that normally would not be provided out to the public.

JUSTICE EVA GUZMAN: Typically, the court issues those in a separate document. Is this the type of order that would contain those findings whereas otherwise you would have to file a request, etc.? I guess that's my question.

ATTORNEY BRENDA LOUDERMILK: Yes, Your Honor.

JUSTICE NATHAN L. HECHT: But soa's general counsel submitted an affidavit that says the decisions and interim orders that arise from those referrals, these 4D referrals, of necessity also contain personal and identifying information on these individuals and in many of these documents that have been submitted under seal, there's no identifying information whatsoever or other personal information and in all but one of them, the only identifying information is the driver's license number.

ATTORNEY BRENDA LOUDERMILK: There is the name.

JUSTICE NATHAN L. HECHT: Well, yes. The name is confidential?

ATTORNEY BRENDA LOUDERMILK: The name is, the orders are confidential and the information in them.

JUSTICE NATHAN L. HECHT: Are you aware of any other agency decision in the country that is confidential?

ATTORNEY BRENDA LOUDERMILK: I don't want this to come out as a smart remark, Your Honor, but other Title IV-D proceedings in other states, we would submit are confidential.

JUSTICE NATHAN L. HECHT: But anything else? Antitrust, securities, FCC, trade?

ATTORNEY BRENDA LOUDERMILK: I'm not familiar with those proceedings, Your Honor.

JUSTICE NATHAN L. HECHT: Any state agency decision? Railroad Commission, anything that's confidential?

ATTORNEY BRENDA LOUDERMILK: No and the reasoning behind that is because the information that is contained in the Title IV records, including these orders and some of them are innocuous, I will agree, came from private sources in many instances, from family members who gave this information, not just from court records. There's no evidence in the record that the only information that's in these administrative orders and the Title IV-D information that the Attorney General maintains came solely from a suit by a parent-child relationship over in the courts. In fact, there's, the Attorney General has administrative subpoena power to request information about a delinquent obligor from many sources, from banks, other financial institutions, from other agencies that may have that information. I mean as you can see, by some of the orders, some of that is private information that you wouldn't normally see in a governmental situation.

JUSTICE DEBRA LEHRMANN: Isn't that true with orders that come from the 49 agencies that go through the regular channel of the courts?

ATTORNEY BRENDA LOUDERMILK: You mean through the courts?

JUSTICE DEBRA LEHRMANN: Yes.

ATTORNEY BRENDA LOUDERMILK: And that what is true?

JUSTICE DEBRA LEHRMANN: In other words, the kind of information that you're talking about is the same kind of information that is used at a 4D agency when it goes through the regular channel of the district court.

ATTORNEY BRENDA LOUDERMILK: That may be very well true and the federal government and the Federal Office of Child Support Enforcement recently, well not recently, it was 2008, promulgated rules on the privacy aspect of it. They were not made effective until December 31st of this year, but they offer guidance as to the participating states as to what is the scope of this confidentiality and the scope, their definition of confidential information is any information relating to an individual and there was one commenter that stated that there's an inconsistency here. Some of this information may be public in the court system. You can go get it there. It's the conflict between the public information laws and the regulation.

CHIEF JUSTICE WALLACE B. JEFFERSON: Let me just pose this question to you. Let's say and this isn't your agency, I know this. This isn't how you operate, but let's say 10 years from now a rogue administrative office that is arbitrarily suspending licenses of lawyers, but not doing the same for drivers and just doing that to such an extent that it would be an equal protection violation. How is the party who's subject to that arbitrariness to expose it, how do they learn that SOAH is violating their equal protection rights?

ATTORNEY BRENDA LOUDERMILK: Parties are not denied due process in these administrative proceedings. All of the contested case procedures in SOAH are required to be followed in the license suspension. They are a participant. They are entitled to bring witnesses. They get copies of their own orders.

CHIEF JUSTICE WALLACE B. JEFFERSON: Of their own, but how do they know that they're being treated differently than another class of people?

ATTORNEY BRENDA LOUDERMILK: They don't, but that's not usually unless they can make it a protected class, that's usually not grounds for overturning a suspension at all.

CHIEF JUSTICE WALLACE B. JEFFERSON: Okay, well let's make it a protected class. Then all African-Americans' licenses are suspended and no one else's. How are they to be able to show that? How do they learn?

ATTORNEY BRENDA LOUDERMILK: I do not know, but I suspect that it would be available in a court of law that that type of information would be available.

CHIEF JUSTICE WALLACE B. JEFFERSON: Well, but I'm just saying if all of the orders or decisions are secret, how is that information ever to come to light?

ATTORNEY BRENDA LOUDERMILK: That doesn't necessarily prevent a court from subpoenaing that type of information. What we're talking about here is a system of maintaining Title IV-D information in the Title IV-D program and the stricture to those agencies that operate that program to maintain the confidentiality and to not disclose it to interested third parties who are not part of the process. There are other systems that are like that. The criminal history record information, DPS and the federal government can only release that information to authorized persons.

JUSTICE NATHAN L. HECHT: But he's not asking for that. He's asking for the decisions and in the criminal system, all of the decisions are available to the public. It would be unheard of to have a judgment in a criminal case to be sealed.

ATTORNEY BRENDA LOUDERMILK: I don't disagree with that, Your Honor.

JUSTICE NATHAN L. HECHT: Unless it involved national security or something.

ATTORNEY BRENDA LOUDERMILK: I do disagree that these orders are on an equal level with court orders. This Court in the Red Fern Flag case has said that administrative agencies exercise in contested case procedures are not courts even though they exercise a quasi judicial function, that they are administering an executive function in that sense.

JUSTICE PAUL W. GREEN: Well what if we disagreed with your position on this and rule that these records are publicly available. What is the effect of that? You mentioned they're federal agencies. Is there federal money involved that would be lost or something like that if we were to not comply with something?

ATTORNEY BRENDA LOUDERMILK: I know the Attorney General would be very concerned with that and we're concerned with the scope of the order and we're looking to you for a decision. However, if the federal government would find that we're not in compliance with Section 65426 because we do let out this, the state has ordered that this information be released, we currently receive approximately 257 million funds through the child support process. We receive 486 million funds for the temporary assistance in needy families. All of that is at risk.

CHIEF JUSTICE WALLACE B. JEFFERSON: But isn't 65426 more directory? In other words, it requires safeguards, privacy safeguards to be in place, but it doesn't expressly say that opinions and orders not be. So, for example, a privacy safeguard could be that we will redact information regarding address and bank account numbers and that sort of thing. Wouldn't that be in compliance with that section?

ATTORNEY BRENDA LOUDERMILK: 656 says that the safeguards have to include the unauthorized use or disclosure of information relating to proceedings or actions including enforcement and collection of child support. It's information and does it come within the scope of that statute? The child suspension proceedings are Title IV-D proceedings to enforce child support so we think it's fairly reasonable within the scope of that that these administrative orders and decisions fit within that safeguard.

JUSTICE PHIL JOHNSON: Counsel, let me ask you going strict to the statute. 231.108 says except as provided

by subsection C, information, the files and records are confidential. Subsection (c) says the Title IV agency may use or release information from the files and records, including information resulting from a communication made by a recipient of financial assistance for purposes directly connected with the administration of the child support determination, parent locator, etc. So (a) says except for the purposes in (c), it's confidential. (c) says you may use or release it. Now why would chapter 232, a different chapter, not come within the scope of the exception provided there for (c)? It says you may use or release the information. So that's not confidential. It specifically says it's not confidential. So if you use it or release it, then an order to suspend the license under Chapter 232, why, how is it still confidential? It seems like that's specifically not covered.

ATTORNEY BRENDA LOUDERMILK: It's clear. Sometimes muddied in the regulations and the statutes that a Title IV agency can use Title IV information for a purpose, just as you have indicated, for a Title IV purpose. But a release under the Public Information Act to a person that's not involved in the process is not a release under Title 4.

JUSTICE PHIL JOHNSON: Well my question is under A that makes it confidential, A specifically says the subpart C is excepted from being confidential. So if you use that in Chapter 232, it seems to me like that the statute itself pulls it out of the confidentiality mode and you can choose what you have to use. You may not want to use everything you have, but what you do choose to put into Chapter 232 proceedings seems like it's excepted from being confidential and it's the choice of the agency how much of that you disclose. Am I misunderstanding that?

ATTORNEY BRENDA LOUDERMILK: No, I don't think you are and I think by the language the Title IV-D agency may use or release, it's the choice of the Attorney General.

JUSTICE PHIL JOHNSON: Right. And whatever you choose or release, it seems like is made not confidential under the exception in A. That's what troubling me. I guess, clearly I must be misunderstanding something.

ATTORNEY BRENDA LOUDERMILK: No, we haven't chose to release it. Let me say this and I have only started reading the federal rules. They're comprehensive and complex and sometimes not very clear. I do think the conclusion that I have reached in this is that a Title IV-D agency can release the information only for Title IV-D purposes and that's what this is about. Mr. Jackson mentioned in response about keeping the location and information--

JUSTICE PHIL JOHNSON: Well let me interrupt you just a moment. Isn't suspending a license a Title IV-D purpose?

ATTORNEY BRENDA LOUDERMILK: Yes, it is.

JUSTICE PHIL JOHNSON: Okay, so you release the information and that's a Title IV-D purpose.

ATTORNEY BRENDA LOUDERMILK: But we didn't release. I would not agree that we released it in that sense. We used it in this Title IV-D purpose.

JUSTICE PHIL JOHNSON: So you used it?

ATTORNEY BRENDA LOUDERMILK: If the confidentiality is maintained, we haven't released it out to the public.

JUSTICE PHIL JOHNSON: But if you use it for that purpose, isn't it excepted from being confidential by the plain language of subpart A?

ATTORNEY BRENDA LOUDERMILK: No.

JUSTICE PHIL JOHNSON: Except for, except and provided by subchapter C, that information is confidential.

ATTORNEY BRENDA LOUDERMILK: I would not agree with that interpretation, Your Honor.

JUSTICE DEBRA LEHRMANN: May I just ask you real quickly, have courts in other states decided this issue?

ATTORNEY BRENDA LOUDERMILK: There are no cases specifically on this issue.

JUSTICE DON R. WILLETT: As a general matter, should courts indulge in sort of a general construction presumption that statutes about confidentiality ought to be construed narrowly as a general matter?

ATTORNEY BRENDA LOUDERMILK: Yes, I think this Court has in A&T Consultants that first came out in Texas law that you look at, of course, the plain language of the statute unless it calls for another type of construction, then you do construe it narrowly. The problem that you have with this statute, it's like one of the many broad statutes. It's broad relating to, concerning capture a huge bit of information. I see my time has expired. We think we are construing the statute properly. We ask the Court to affirm the decision of the lower courts. Thank you.

JUSTICE NATHAN L. HECHT: The federal regulations are under 42US Code 654.

ATTORNEY BRENDA LOUDERMILK: Your Honor, I have that cite for you. They are at 73 Federal Register 54222.

JUSTICE NATHAN L. HECHT: Thank you.

CHIEF JUSTICE WALLACE B. JEFFERSON: Thank you, Counsel.

JUSTICE DALE WAINWRIGHT: Mr. Jackson, you don't want to risk hundreds of millions of dollars of federal funds, do you?

REBUTTAL ARGUMENT OF SAMUEL T. JACKSON ON BEHALF OF PETITIONER

ATTORNEY SAMUEL JACKSON: No, sir.

JUSTICE DALE WAINWRIGHT: How are you not doing that in your opinion?

ATTORNEY SAMUEL JACKSON: Because the federal statute, Your Honor, does not require withholding of the type of information that we see, but specifically, it does not require the withholding of opinions and decisions. When we look at this case--

JUSTICE DALE WAINWRIGHT: Maybe it's not quite that straightforward. If an opinion or decision includes looking at 42654 subsection 26(b), that opinion or decision discloses the whereabouts of a party or the child, that could be a problem, right?

ATTORNEY SAMUEL JACKSON: It could be, Your Honor.

JUSTICE DALE WAINWRIGHT: Or disclose the information about a parent or a child, look at subsection E that could be harmful to the parent or child. That could be a problem.

ATTORNEY SAMUEL JACKSON: Yes, sir.

JUSTICE DALE WAINWRIGHT: So it could be a problem. How do you address that risk?

ATTORNEY SAMUEL JACKSON: Your Honor, it could not be a problem with regard to the opinions and decisions because that type of information is not included in the opinions and decisions. Now when the, when SOAH gets a case, it involves copies of the enforcement orders from the court's office. It involves any orders that may have been in it by the district court's office or by the district courts and that becomes part of the SOAH record. Those records may contain that type of information. So if you sought specifically those documents, if the Attorney General could show that that type of information is in those documents, then there might be an issue. But with regard to opinions and decisions--

JUSTICE NATHAN L. HECHT: I know you haven't seen the documents under seal, but one of them does have health information and recites information about the person whose license is being suspended.

ATTORNEY SAMUEL JACKSON: Your Honor, I think it's important that we understand that the inquiry here is restricted to access to court orders and decisions, not access to the other document or information that may be included in the submission of those claims to soa. I'm not sure what the nature of the opinions that you have been presented, but I believe if you will take a look at those, the only identifying information that you're going to find is the identifying information concerning the respondent. That's the person who is being prosecuted. His name might be involved there. In certain court orders where they are notifying him of hearings, his address may be included in that document, but it is not included in the opinions or decisions and I would ask the Court to take a good look at the documents that have been presented to the Court for in camera review to make note of that. The only identifying information in that document is the respondent's name and perhaps his license number. I don't believe Social Security numbers are included in there. Certainly, no information regarding the custodial parent or the child is included in that document because it's not necessary.

JUSTICE NATHAN L. HECHT: Have you seen someone else's order or decision in a license suspension case?

ATTORNEY SAMUEL JACKSON: Yes, sir, I've seen several of them. I was the administrative law judge for the Attorney General handling those cases before I went into private practice. So not only have I seen them [inaudible]. I do think it's very important in this situation, in this case, that the Court does recognize that we're not limited. If we look, accept the argument of the Attorney General and that is that all information that is held by the Attorney General's office is confidential and, therefore, nondisclosable, then we're looking at a huge number of cases, administrative agencies who could make the same claim because there are in excess of 900 statutes that declare certain information confidential, but it does not go to say that that confidentiality extends to court documents and opinions. If you look at the 231.108 closely, you'll see that there is no reference in that statute regarding license suspension, court orders, opinions, nothing there to tie that statute in with release of information under 2001.004 or 552.022. It doesn't mention--

JUSTICE NATHAN L. HECHT: If we asked the Attorney General do you have any information about how other states treat these kinds of orders.

ATTORNEY SAMUEL JACKSON: Your Honor, this is a unique situation. No other state that I'm aware of and I have researched it has declared that administrative court orders and opinions are excepted from disclosure. Now this state--

JUSTICE PHIL JOHNSON: Have they gone the other way though? Have they said they're not found anything where they say they're not?

ATTORNEY SAMUEL JACKSON: I've not found a case that even entertains that issue, Your Honor.

JUSTICE PHIL JOHNSON: Either way?

ATTORNEY SAMUEL JACKSON: No.

JUSTICE PHIL JOHNSON: Not one way or the other?

ATTORNEY SAMUEL JACKSON: No. But I think that it is important to note in that regard that, again, we're talking about decisions and opinions. No court, I don't believe is ready to determine that that is not the case. Now--

JUSTICE PHIL JOHNSON: Now wait. You said you functioned as an administrative judge. Could the opinions be written and then have the information any specific identifying information as to children and other parties except for the respondent in that proceeding taken out of the order? As Justice Guzman suggested maybe a separate order with findings if you needed findings something of that nature. Could it be done? Could the department arrange that?

ATTORNEY SAMUEL JACKSON: Your Honor, I think it could be done, but I think that that would be [inaudible] of the two statutes mandating disclosure of that information. 2001.0043 makes no exceptions. Now there is one exception that the Department of Insurance has and that is because they've been excluded from the definition of state agencies. That is the only agency that does not have to follow that mandate. Every other state agency has to make that information available. It's mandatory and nondiscretionary. So any state agency that fails to provide that information is in violation of that statute and if I may just say this, Your Honor, 552.022, I think, should be the focal point of this decision. I really don't think that much question about the application of 2001.004, but that only protects court orders and decisions. The chapter 552.002, I'm sorry, 552.022, talks about all types of documents that courts, contracts and so forth that the state agencies may engage in, they would also be excluded from access to the public.

CHIEF JUSTICE WALLACE B. JEFFERSON: Thank you, Mr. Jackson. Any further questions? The [inaudible] is submitted then and the Court will take a brief recess.

ATTORNEY SAMUEL JACKSON: Thank you.

MARSHAL: All rise.

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