



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1997

Michael D. McKinney, M.D.
Commissioner
Texas Health and Human
Services Commission
P.O. Box 13247
Austin, Texas 78711

OR97-1398

Dear Commissioner McKinney:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107081.

The Texas Health and Human Services Commission (the "Commission") received a request for "any and all information regarding me, Phillip H. Hunke, D.D.S., M.S.D." The requestor claims to have a special right of access to the information pursuant to section 552.023 of the Government Code. You assert that the requested information is excepted from required public disclosure based on sections 552.101 and 552.108 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). The requested information concerns "the detection, investigation, or prosecution of crime." We, therefore, conclude that the Commission may withhold the requested information from disclosure based on section 552.108. *See* Attorney General Opinion MW-575 (1982).

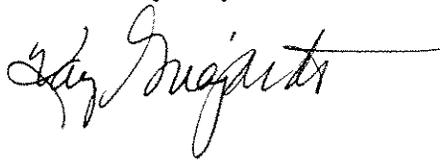
The requestor asserts a right to the information under section 552.023 of the Government Code. That provision grants a person a right of access to information relating to that person when the information is protected from public disclosure by laws intended to protect that person's privacy interests. We believe section 552.108 protects the law enforcement interests of the Commission, in particular its Medicaid Provider Sanctions

Division, and the Medicaid Fraud Control Unit of the Office of the Attorney General. We, therefore, do not believe that the requestor has a special right of access to the information based on section 552.023 of the Government Code. *Cf.* Open Records Decision No. 587 (1991).

In conclusion, the Commission may withhold the information from the requestor based on section 552.108 of the Government Code. Further, in light of the fact that a governmental body has the discretion to waive section 552.108, we note that the information may also be deemed confidential by law. *See* 42 U.S.C. § 602(a)(9); Hum. Res. Code § 12.003, 21.012; Open Records Decision No. 584 (1991).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 107081

Enclosures: Submitted documents

cc: Philip H. Hunke, D.D.S., M.S.D
1801 South 5th, Suite 112
McAllen, Texas 78503
(w/o enclosures)