



March 24, 1999

Ms. Stacy E. Sallee  
Associate Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR99-0825

Dear Ms. Sallee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122369.

The Texas Health and Human Services Commission (the "commission") received a request for the "fraud and abuse scenarios that have been developed for the [commission] as part of the Medicaid Fraud and Abuse Detection System (MFADS) project." You clarified the request with the requestor who "explained that he is requesting the algorithms developed by the commission and its contractor" as part of the MFADS system. Gov't Code §552.222. You contend that the requested information is not subject to the Open Records Act because it is not "public information," and that the requested information is excepted from public disclosure by sections 552.101, 552.108 and 552.110 of the Government Code.<sup>1</sup> We have reviewed your arguments and the submitted representative sample of information.<sup>2</sup>

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Electronic Data Systems Corporation, Intelligent Technologies Corporation, and HNC Software, Inc. of the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990)

---

<sup>1</sup>We note that the commission has withdrawn its section 552.101 claim in a second letter to this office.

<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

As a threshold issue, you argue that the algorithms and related documentation are not subject to the Open Records Act under the reasoning set forth in Open Records Decision No. 581 (1990). In Open Records Decision No. 581, this office determined that certain computer-related information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code.

It appears that the algorithms and related documentation at issue were created with criteria, factors, and objectives selected by the commission. The algorithms and related documentation "analyze claims payment data to locate areas of practice and particular providers of Medicaid services who may be committing fraud and/or abuse in the Medicaid program." You inform us that "Medicaid is a joint state and federal program that provides medical assistance and care to certain low-income persons." This office has stated on many occasions that there is a legitimate public interest in the expenditure of public funds. *See* Gov't Code 552.022(3); Open Records Decision Nos. 541 at 1-2 (1990), 520 at 5 (1989), 518 at 7 (1989), 233 at 2 (1980). Moreover, this office has stated that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992). Thus, we believe that the requested algorithms and related documentation which contain the factors for detecting Medicaid fraud and abuse have an independent public significance other than their use as a tool for the maintenance, manipulation, or protection of public property. Open Records Decision No. 581 at 4 (1990); *see also* Open Records Letter No. 97-2023 (1997) (mathematical formula used to determine pay grade levels for staff position and all factors and information used to go into calculation have independent public significance other than use as tool for maintenance, manipulation, or protection of public property) (enclosed). The algorithms and related documentation are subject to disclosure under the Open Records Act.

We will now consider your arguments against disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from public disclosure an internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement if release of the internal record or notation would interfere with law enforcement or prosecution. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You explain that the Medicaid Provider Integrity section of the commission's Office of Investigations and Enforcement ("OIE") investigates provider fraud and abuse in Medicaid programs and recommends sanctions for such activities. The commission investigates and recommends sanctions in the form of civil penalties. Pursuant to a memorandum of understanding with the Office of the Attorney General, the OIE is required to cooperate with the Medicaid Fraud Control Unit ("MFCU") of the Office of the Attorney General and to make referrals of criminal activity to the MFCU in appropriate circumstances. The MFCU enforces criminal penalties. Thus, pursuant to the agreement, the "OIE and the MFCU share information in a coordinated effort to prevent and remedy fraud and abuse in the Medicaid program." The agreement requires the commission to comply with the MFCU's request for computerized data stored by the commission or its contractors. You assert that release of the algorithms and related documentation, which are used to identify fraudulent providers, would permit providers to circumvent the OIE's and MFCU's investigative efforts. Furthermore, you have submitted a letter from the MFCU in which the MFCU also asserts that it wishes to withhold the requested information under section 552.108. After a review of the commission's and the MFCU's arguments against public disclosure, we conclude that you have demonstrated the MFCU's need to withhold the requested information to protect its law enforcement interest under section 552.108. *See* Open Records Decision No. 586 (1991) (need of another governmental body compels non-disclosure of information under statutory predecessor of section 552.108). Moreover, you have demonstrated that release of the information would interfere with law enforcement. Accordingly, you may withhold the requested algorithms and related documentation under section 552.108(b)(1).

Because the requested information is excepted from public disclosure by section 552.108(b)(1), we need not address your other arguments against public disclosure. We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref: ID# 122369

Enc.: Submitted documents  
Open Records Letter No. 97-2023 (1997)

cc: Mr. Bill Zeruld  
Industry Marketing Manager  
Government Operations  
The Medstat Group  
777 East Eisenhower Parkway  
Ann Arbor, Michigan 48108  
(w/ Open Records Letter No. 97-2023 (1997))

Mr. Drew R. Beckley  
EDS  
11044 Research Boulevard  
Austin, Texas 78759  
(w/ Open Records Letter No. 97-2023 (1997))

Ms. Elizabeth Grieco Cunningham  
General Counsel  
Intelligent Technologies Corporation  
9015 Mountain Ridge Drive  
Houston Building, Suite 350  
Austin, Texas 78759  
(w/ Open Records Letter No. 97-2023 (1997))

Mr. Lee Martin  
Vice President, North American Sales  
HNC Software, Inc.  
5930 Cornerstone Court West  
San Diego, California 92121-3728  
(w/ Open Records Letter No. 97-2023 (1997))