



September 11, 2000

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2000-3482

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138753.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to the testimony of a representative of the commission at a hearing before a joint legislative investigating committee. The request consists of a series of questions about certain aspects of the testimony. You recognize that chapter 552 of the Government Code does not require a governmental body to answer questions or to prepare new information in response to a request for information, but does require a good faith effort to relate a request to information that the governmental body holds. *See* Open Records Decision Nos. 561 at 8-9 (1990), 555 at 1-2 (1990). You inform us that you are prepared to release information that the commission deems to be responsive to most of the requestor's inquiries. You seek to withhold information that relates to two sets of the requestor's questions.¹ You claim that the responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions

¹Those questions are as follows:

You mentioned the dentist who had only billed Medicaid for deep scalings and no cleanings. Who is that dentist and what action was taken as a result of your findings? How was that billing pattern detected and when and what period did it cover?

You mentioned a dentist who had run a mobile van and who saw 58 kids in one day in two cities. Who is that? Again, how was that pattern discovered and when and what action was taken in response?

you claim and have reviewed the representative samples of responsive information that you submitted.²

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Statutory confidentiality under section 552.101 requires express language providing either that certain information is confidential or that it shall not be disclosed to the public. *See* Open Records Decision No. 478 at 2 (1987). You inform us that the submitted information relates to the Medicaid program established under Title XIX of the federal Social Security Act.³ More specifically, you explain that the information pertains to the provision of dental care to children under the Early and Periodic Screening, Diagnosis, and Treatment (“EPSDT”) program and involves the investigation of certain dental providers. You assert that all of the submitted information is confidential under section 552.101 in conjunction with federal and state law.

Federal and state statutes prohibit the disclosure of information concerning a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* 42 U.S.C. § 1396a(a)(7); Hum. Res. Code §§ 12.003, 21.012; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department’s assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a)(emphasis added). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and

²This letter ruling assumes that the representative samples of information that you submitted are truly representative of the requested information as a whole. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). This letter ruling neither reaches nor authorizes the commission to withhold any responsive information that is substantially different from the submitted information.

³*See* 42 U.S.C. § 1301, *et seq.* You explain that the commission is the state agency that is ultimately responsible for oversight of the delivery of Medicaid services in this state. *See* Hum. Res. Code §§ 32.003(3), 32.021, 32.024.

not merely the clients' names and addresses." *Id.* at 3.⁴ Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See also* Hum. Res. Code § 21.012 (a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs). You inform us that the submitted information relates to patients who received dental care under the EPSDT Medicaid program. You state that the requested release of that information is not for use in the administration of the program. We therefore conclude that the submitted information must be withheld from disclosure under section 552.101 of the Government Code. As we are able to make this determination, we need not consider your other arguments under sections 552.101 and 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

⁴You note that in Open Records Decision No. 584 (1991), this office interpreted section 602(a)(9) of title 42 of the United States Code, relating to state plans for aid and services to needy families with children. *See* ORD 584 at 1-2. You point out that section 1396a of title 42, United States Code, applies to a state plan for medical assistance. Section 1396a provides in relevant part that "[a] state plan for medical assistance must . . . provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan[.]" 42 U.S.C. § 1396a(a)(7). We agree that the determinative language of section 1396a corresponds to that of section 602(a)(9), as interpreted in Open Records Decision No. 584 (1991).

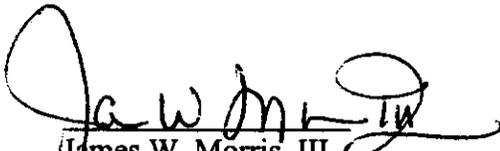
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 138753

Encl. Submitted documents

cc: Ms. Olive Talley
Producer
Dateline NBC
30 Rockefeller Plaza
New York, New York 10112
(w/o enclosures)