



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2007

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2007-15648

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 295773.

The Texas Health and Human Services Commission (the "commission") received a request for "any documents or emails related to the zero-paid, zero-allowed electronic appeals change." You state you have provided the requestor with most of the requested information. You claim that a portion of the remaining information is not subject to the Act. You also claim that portions of the remaining information are excepted from disclosure under sections 552.101 and 552.139 of the Government Code. Additionally, the commission takes no position as to whether some of the remaining information is excepted from disclosure, but claims that release of that information may implicate the proprietary interests of ACS Government Healthcare Solutions ("ACS"). You indicate that you notified ACS of the request and of the company's right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from ACS. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us that the submitted information includes Medicaid provider numbers. In Open Records Letter No. 2005-01453 (2005), we issued a previous determination that authorizes the commission to withhold Medicaid provider numbers under section 552.136 of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). Therefore, to the extent that the submitted information includes Medicaid provider numbers, the commission must withhold this information in accordance with Open Records Letter No. 2005-01453.

Next, you claim that part of the information in Exhibits B and C is not public information under the Act. You state that the portions of Exhibits B and C you have marked as not public relate to various features of the commission's computer programs and the manner in which the programs operate. We note that the Act is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act defines public information as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002. In Open Records Decision No. 581 (1990), this office determined that certain computer 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 that is made public under section 552.021 of the Act. *See* Open Records Decision No. 581 at 6 (1990) (construing predecessor statute). Having considered your representations, we find that the portions of Exhibits B and C you have marked as not public are used solely as tools to maintain, manipulate, or protect public property and have no other significance. *Id.* As such, the marked information is not public information, as defined by section 552.002, and thus is not subject to the Act. Therefore, the commission need not release to the requestor the portions of Exhibits B and C that you have marked as not public.¹

Next, you state that a portion of the remaining information consists of Medicaid client information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by

¹ As we are able to make this determination, we need not address the remaining arguments against disclosure of this information. Because we do not understand the commission to seek a ruling with respect to the remaining information in Exhibit C, this decision does not address the public availability of that information.

statutes such as sections 12.003 and 21.012 of the Human Resources Code, which you state except a portion of the remaining information. Section 12.003 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 not merely the clients’ names and addresses.” Open Records Decision No. 584 at 3 (1991). 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* 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. § 431.300 et seq.; 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); Open Records Decision No. 166 (1977).

You state that some of the information at issue relates to or could identify recipients of commission benefits. You also inform us that in this instance the release of the information in question would not be for a purpose directly connected with the administration of the programs to which the information pertains. Based on your representations and our review of the information at issue, we conclude that the information you have marked in Exhibit B under this section is confidential under section 12.003 of the Human Resources Code and must be withheld under section 552.101 of the Government Code.²

Finally, ACS claims that portions of its information are excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). However, section 552.102 only protects information in a personnel file of a governmental body, not a private third party. The information submitted to us for review is not information from the

² As our ruling for this information is dispositive, we need not address the remaining argument against disclosure.

personnel files of a governmental body. Accordingly, the commission may not withhold any portion of the information from disclosure pursuant to section 552.102 of the Government Code.

In summary, the commission need not release the portions of Exhibits B and C that you have marked as not public. To the extent that the submitted information is encompassed by Open Records Letter No. 2005-01453, the commission must continue to rely on this previous ruling. The commission must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

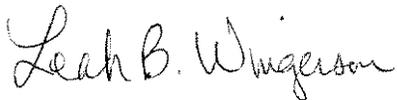
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Hadassah Schloss at the Office of the Attorney General 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 295773

Enc. Submitted documents

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