



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2010-10751

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 389191 (PIR No. 10-28034).

The Office of the Attorney General (the "OAG") received a request for the last inspection report concerning the Colonnades at Reflection Bay Nursing Home in Pearland, Texas. The OAG asserts the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The OAG explains Exhibit B pertains to a case investigated by its Medicaid Fraud Control Unit

¹We assume 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.

(the "MFCU") that concluded and did not result in conviction or deferred adjudication. Based on the OAG's representation, we agree section 552.108(a)(2) is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes the identification and description of the complainant. The OAG asserts the complainant's name is confidential under section 12.003 of the Human Resources Code.

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. 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). In Open Records Decision No. 584 (1991), this office concluded "[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." *Id.* at 3. 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* 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).

The OAG explains the MFCU is charged by federal law with investigating and prosecuting violations of all applicable state laws pertaining to fraud in the administration of the Medicaid program and reviewing "abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan[.]" *See* 42 C.F.R. § 1007.11(b)(1). Because release of the complainant's name in this instance is not for use in the

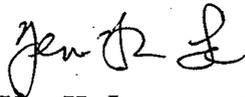
administration of the assistance program, we conclude the OAG must withhold the information under section 12.003.

In summary, except for basic information, the OAG may withhold Exhibit B under section 552.108(a)(2). The OAG must withhold the complainant's name under section 12.003 of the Human Resources Code and release the rest of the basic information pursuant to section 552.108(c).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 389191

Enc: Submitted documents

c: Requestor
(w/o enclosures)