



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2010

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-17522

Dear Ms. De La Garza:

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# 400563 (PIR# 17674).

The City of Houston's Department of Health and Human Services (the "department") received a request for (1) records pertaining to the requestor's dental treatment; (2) contracts, bids, policies, and treatment guidelines and fee schedules regarding dental treatment providers; and (3) a list of names of persons who received treatment under the AAA dental plan during a specified time period. You state the department has provided most of the requested information to the requestor. You claim the requested list of patient names is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you acknowledge, and we agree, the department failed to request a ruling or submit the responsive information at issue within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental

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 those records contain substantially different types of information than that submitted to this office.

body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider your arguments under that section for the information at issue.

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 protected by other statutes, such as section 181.006 of the Health and Safety Code. Section 181.006 states:

For a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) of the Health and Safety Code defines “[c]overed entity,” in part, as any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2). You inform us the department operates clinics that collect, use, and store information regarding individuals' medical histories, information about the issue for which an individual is receiving care, and information regarding the treatment provided to an individual. You assert the information collected, used, and stored by the department's

clinics consists of protected health information. Thus, you claim the department is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether the department is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether the department engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [“HIPAA”].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

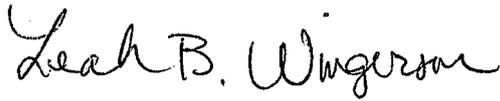
(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 160.103. The information at issue consists of a list of names of persons who have received dental treatment at the department’s clinics. Accordingly, we conclude the list of patient names constitutes individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the list of names is protected health information for purposes of section 181.006 of the Health and Safety Code. You inform us the list of names is collected, used, and stored by the department. Therefore, with respect to the information at issue, the department is a health care entity that is in the practice of collecting, using, and storing protected health information, and, consequently, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Accordingly, the department must withhold the requested list of names under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 400563

Enc. Submitted documents

c: Requestor
(w/o enclosures)