



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2011

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

OR2011-13748

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# 431277.

The Texas Health and Human Services Commission (the "commission") received a request for a specified Utilization Review of a named nursing home. You state you have released a portion of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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. This section encompasses information other statutes make confidential. You raise section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the [commission'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 [commission] or acquired by employees of the [commission] in the performance of their official duties.

Hum. Res. Code § 12.003(a); *see also id.* § 21.012 (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).<sup>1</sup> The term “assistance” in sections 12.003 and 21.012 includes “all forms of assistance and services for needy persons authorized by Subtitle C” of title 2 of the Human Resources Code. *Id.* § 11.001(4); *see also id.* § 31.001 *et seq.* (Hum. Res. Code tit. 2, subtit. C, Assistance Programs).

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 [DHS] clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” ORD 584 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 also* 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 assert that the information you have marked identifies and relates to Medicaid recipients. You inform us, in this instance, the release of this information would not be for purposes directly connected with the administration of a health and human services program. Based on your representations and our review, we conclude the information you have marked is confidential under section 12.003 of the Human Resources Code and must be withheld under section 552.101 of the Government Code. As you raise no other exceptions to disclosure, the remaining information must be released to the requestor.

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](http://www.oag.state.tx.us/open/index_orl.php),

---

<sup>1</sup>We note the former Texas Department of Human Services (“DHS”) ceased operations on September 1, 2004, and the commission now administers the Medicaid program formerly administered by DHS. *See* Health and Human Services Commission website at <http://www.hhsc.state.tx.us>; Act of June 2, 2003, 78th Leg., R.S., ch. 198, 2003 Tex. Gen. Laws 611.

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large, stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 431277

Enc. Submitted documents

c: Requestor  
(w/o enclosures)