



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2011

Mr. Jimmy A. Cassels
For The Angelina County Cities Health District
Cassels & Reynolds, L.L.P.
P.O. Box 1626
Lufkin, Texas 75902-1626

OR2011-14084

Dear Mr. Cassels:

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# 431305.

The Angelina County Cities Health District (the "district"), which you represent, received a request for any information related to the subject of a specified e-mail. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address your assertion that the request for information is vague and not specific enough to implicate or necessitate a response. You state the "[r]equestor isn't requesting any specific information. Rather, [the requestor] wants to know what the email is about." You state "[i]t could be the case that no personnel could remember what such a past, vague email referred to[.]" However, you go on to state one of the parties to the e-mail does recall the subject of the e-mail at issue. We note that administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). A governmental body is required to make a good-faith effort to relate a request to responsive information that it holds or to which it has access. *See Open Records Decision No. 561 at 8* (1990) (construing statutory predecessor). You inform us the e-mail pertained to a meeting regarding the condemnation of a residence of an individual who also receives medical

treatment from the district. You have submitted both the patient's medical records and information pertaining to the condemnation. We find the patient's medical records are not responsive to the present request. This ruling does not address the public availability of that information, and the district need not release any non-responsive information. However we find the records pertaining to the condemnation are responsive. Accordingly, we will determine whether the claimed exceptions are applicable to the submitted responsive information.

Next, we address the requestor's contention that the district did not comply with the procedural requirements of the Act. The requestor asserts that the district failed to comply with section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). The district received the request for information on July 13, 2011. Therefore, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was July 27, 2011. The submitted documents reveal the district sent the requestor a written statement that it wished to withhold the requested information, and asked for a decision from the attorney general, by certified mail on July 26, 2011. The submitted documents also reveal the district timely sent the requestor a redacted copy of its written communication to the attorney general by certified mail. Thus, we conclude that the district fully complied with the requirements of section 552.301(d) in requesting this decision.

The requestor also contends the district failed to comply with section 552.301(e-1) of the Government Code by failing to provide the requestor with all the supporting documents listed in its written comments to the attorney general, including a copy of the request and notice letters sent to the requestor. Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). We find the requestor's receipt of the district's August 2, 2011 brief, which provides the substance of the district's arguments under section 552.101, satisfies the statutory requirement under section 552.301(e-1). Thus, the district complied with the procedural requirements set out in section 552.301(e-1).

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. Thus, section 552.101 encompasses information other statutes make confidential. For information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. You contend portions of the submitted information are protected under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for

medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. Therefore, we held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the district may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 also encompasses section 81.046 of the Health and Safety Code, which provides:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 is confidential and may not be released unless it is subject to an exception set out

in the statute. The submitted information consists of records relating to a case or suspected case of disease or health condition. We understand the information was furnished to, gathered or created by the district pursuant to the provisions of chapter 81. Thus, we agree that section 81.046(b) governs the release of this information. You state none of the release provisions of section 81.046 are applicable in this instance. Accordingly, based upon your representations and our review of the responsive information, we agree the district must withhold the responsive information, which we have marked, under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.¹

You request that this office issue a previous determination that would permit the district in the future to withhold information under section 81.046 of the Health and Safety Code, and sections 159.002 and 159.004 of the Occupations Code, without the necessity of requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a ruling at this time. Accordingly, 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 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/agn

Ref: ID# 431305

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.