



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Ms. Myrna S. Reingold
Galveston County Legal Department
County Courthouse
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2011-17006

Dear Ms. Reingold:

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# 436468.

Galveston County Coordinated Community Clinics (the “clinic”) and Galveston County Health District (collectively, the “county”) received a request for all records relating to the requestor and her employment. You state you have released some of the requested information to the requestor. You claim that the remaining requested 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.

Initially, you acknowledge, and we agree, that the county failed to comply with the fifteen-business-day deadline prescribed by section 552.301(e) of the Government Code. *See* Gov’t Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake.

See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider whether or not any of the submitted information is excepted from disclosure under this section.

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. You claim the submitted information is protected from disclosure 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 and 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.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We, therefore, 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 county 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.

You raise section 552.101 of the Government Code in conjunction with section 51c.110 of title 42 of the Code of Federal Regulations for a portion of the submitted information.¹ You

¹We note an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

inform us the clinic, which is operated by the Galveston County Health District, is a federally qualified health center that receives federal operating grants through section 330(e) of the Public Health Service Act (the "PHSA"). See 42 U.S.C. § 254b(e) (operating grants), 254b(a) (defining health center). We note that section 330 of the PHSA is now found at section 254b of title 42 of the United States Code. Health Centers Consolidation Act of 1996, Pub. L. No.104-299, § 2, 110 Stat. 3626 (PHSA amended and codified at 42 U.S.C. § 254b). A health center that receives a grant under this subsection of the PHSA is required to establish and maintain records in accordance with regulations issued by the secretary of the United States Department of Health and Human Services. 42 U.S.C. § 254b(n). Part 51c of the Code of Federal Regulations establishes regulations for entities that receive project grants under section 330 of the PHSA. See 42 C.F.R. § 51c.101 (stating regulations applicable to project grants authorized by section 330 of PHSA). As a recipient of such grants, we agree the clinic is subject to the regulations set forth in part 51c of title 42 of the Code of Federal Regulations.

Section 51c.110 of title 42 of the Code of Federal Regulations provides as follows:

All information as to personal facts and circumstances obtained by the project staff about recipients of services shall be held confidential, and shall not be divulged without the individual's consent except as may be required by law or as may be necessary to provide service to the individual or to provide for medical audits by the Secretary [of the United States Department of Health and Human Services] or his designee with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

42 C.F.R. § 51c.110. The county states the information at issue consists of personal facts and circumstances that were obtained by project staff at the clinic about recipients of services. The information at issue consists of clinic patient records regarding the patients' treatment at the clinic and the names and identification numbers of patients. Thus, we agree the information the county seeks to withhold consists of personal facts and circumstances that were obtained by project staff about recipients of services. You indicate the individuals at issue have not consented to the release of their information. Furthermore, we note that the information at issue is not in summary, statistical, or other form which does not identify individuals. Therefore, the county must withhold the information at issue under

section 552.101 of the Government Code in conjunction with section 51c.110 of title 42 of the Code of Federal Regulations.² The remaining information must be released.³

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 436468

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

³We note the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a) (person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). Thus, if the county receives another request for this particular information from a different requestor, then the county should again seek a decision from this office.