



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2012

Mr. Walter Ehresman  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2012-01824

Dear Mr. Ehresman:

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# 443185 (DSHS File: 19581/2012).

The Texas Department of State Health Services (the “department”) received a request for certain information from the provider registration data as entered from the “ImmTrac Site Registration Form[.]” You claim the 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 representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the department failed to meet the statutory deadlines imposed by section 552.301 of the Government Code. *See* Gov’t Code § 552.301(b), (d), (e). Pursuant to section 552.302 of the Government Code, a governmental 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 a compelling reason exists 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

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<sup>1</sup>We 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 those submitted to this office.

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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider its applicability to 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 section 161.007 of the Health and Safety Code, which provides in relevant part:

(a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records . . . shall establish and maintain an immunization registry. The executive commissioner of the Health and Human Services Commission by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code[.]

...

(j) Except as provided by Sections 161.00705, 161.00706, 161.00735(b), and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual’s legally authorized representative.

Health & Safety Code § 161.007(a)(1), (j). You state the department has established an immunization registry, ImmTrac, that functions as a central repository of immunization information regarding patients who choose to have that information included in the registry. *See id.* § 161.007(a). You also state the department encourages health care providers to participate in ImmTrac and has a registration procedure whereby those providers can register. You explain a successfully registered provider is given electronic access to ImmTrac to enter data regarding immunizations given to his or her consenting patients. The requested information consists of the information associated with the registration of those health care providers to participate in ImmTrac. You contend the submitted health care provider registration information is confidential because it was provided to the department in connection with the immunization registry. However, we note the legislative history of section 161.007 reflects the statute is intended to protect the confidentiality of patient

information. *See* House Research Org., Bill Analysis, Tex. H.B. 2382, 81st Leg., R.S. (2009) at 1. Likewise, section 100.2 of title 25 of the Texas Administrative Code, as adopted by the department pursuant to section 161.007(a)(1), provides in part:

Except as provided by Health and Safety Code, Chapter 161, Subchapter A, § 161.00705, information that individually identifies a child or other individual, and is received by the department for the immunization registry, is confidential and may be used by the department for registry purposes only. Unless specifically authorized by Health and Safety Code, Chapter 161, Subchapter A, the department may not release registry information to any individual or entity without the written consent of the person or, if a minor, the parent, managing conservator, or legal guardian.

25 T.A.C § 100.2; *see also id.* §§ 100.1, .3-.7. Moreover, the consent provisions of section 161.007 reflect the statute is intended to protect the confidentiality of patient information. *See generally* Health & Safety Code § 161.007. Based upon our review, we find the submitted information pertains to health care providers, not to the patient information collected for the registry as contemplated by section 161.007. Thus, we find the submitted information is not confidential under section 161.007(j) of the Health and Safety Code and may not be withheld under section 552.101 of the Government Code on that basis.

We note some of the submitted information is subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). Therefore, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners have affirmatively consented to their public disclosure or the e-mails are excluded by subsection 552.137(c).<sup>3</sup> As no further exceptions to disclosure have been raised, the remaining information must be released.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

You ask this office to issue a previous determination permitting the department to withhold registration information from health care providers under section 552.101 of the Government Code in conjunction with section 161.007(j) of the Health and Safety Code. We decline to issue such a previous determination at this time. Accordingly, 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), 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 443185

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)