



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2012

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

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

OR2012-10072

Dear Mr. Lopez:

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# 457773 (DSHS File Nos. 20178/2012 and 20205/2012).

The Texas Department of State Health Services (the "department") received two requests from different requestors for information pertaining to the second requestor, including specified investigations, complaints, reports or communications between the department's management and the human resources department.¹ You state some information has been or will be made available to the requestors. You claim 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 first requestor. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

¹We note the first request was received on April 10, 2012, while the second request was received on April 18, 2012. For purposes of this ruling, the requestor whose request was received on April 10, 2012, will be referred to as the "first requestor," while the requestor whose request was received on April 18, 2012, will be referred to as the "second requestor."

§ 552.101. This section encompasses information protected by other statutes, including section 531.1021 of the Government Code, which provides in relevant part:

(g) All information and materials subpoenaed or compiled by the [Office of the Inspector General of the Health and Human Services Commission (the "OIG")²] in connection with an audit or investigation or by the office of the attorney general in connection with a Medicaid fraud investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or the attorney general or their employees or agents involved in the audit or investigation conducted by the office or the attorney general, except that this information may be disclosed to the state auditor's office, law enforcement agencies, and other entities as permitted by other law.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

Id. § 531.1021(g), (h). You assert the submitted information is excepted from disclosure under section 531.1021(g). Section 531.1021 is located in Subchapter C of Chapter 531 of the Government Code, titled "Medicaid and Other Health and Human Services Fraud, Abuse, or Overcharges." The legislature's amendment to section 531.1021(g) added express language stating information connected to investigations of Medicaid fraud is confidential. Section 531.102, also found in Subchapter C, further specifies the OIG "is responsible for the investigation of fraud and abuse in the provision of health and human services[.]" *Id.* § 531.102(a). Thus, Subchapter C addresses the responsibilities of the OIG in conducting investigations of Medicaid and other health and human services fraud and abuse. Therefore, section 531.1021 applies only to audits and investigations of Medicaid and other health and human services fraud and abuse. The information at issue consists of documents related to an internal personnel investigation into the alleged misconduct of a department employee. We find this information is not related to Medicaid or other health and human services fraud, abuse, or overcharges. Therefore, the department may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

A portion of the submitted information is subject to section 552.102(a) of the Government Code, which excepts from disclosure "information in a personnel file, the disclosure of

²We note the Health and Human Services Commission directly oversees the department.

which would constitute a clearly unwarranted invasion of personal privacy.”³ *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We note the date of birth at issue pertains to the second requestor. Section 552.023(a) of the Government Code states that a person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the second requestor has a right of access to his own date of birth and the department may not withhold this information under section 552.102(a). However, the department must withhold the date of birth we have marked under section 552.102(a) of the Government Code from the first requestor.

We note portions of the remaining information pertaining to the second requestor may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we have marked from the first requestor under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the department may not withhold the marked information under section 552.117(a)(1).⁴ As previously noted, the second requestor has a right of access to his own information, and the

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b). We note, however, the second requestor has a right of access to his own social security number. *See generally id.* § 552.023(b).

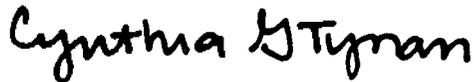
department may not withhold it from him under section 552.117(a)(1). *See* Gov't Code § 552.023(a).

In summary, the department must withhold from the first requestor: (1) the date of birth we have marked under section 552.102(a) of the Government Code, and (2) to the extent the individual whose information is at issue timely elected confidentiality under section 552.024 of the Government Code, the information we have marked under section 552.117(a)(1) of the Government Code. The department must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/ag

Ref: ID# 457773

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

JUDGMENT RENDERED AUGUST 31, 2016

NO. 03-14-00594-CV

Ken Paxton, Attorney General of the State of Texas, Appellant

v.

Texas Department of State Health Services, Appellee

**APPEAL FROM 353RD DISTRICT COURT OF TRAVIS COUNTY
BEFORE CHIEF JUSTICE ROSE, JUSTICES GOODWIN AND FIELD
REVERSED AND RENDERED -- OPINION BY CHIEF JUSTICE ROSE**

This is an appeal from the judgment signed by the district court on August 28, 2014. Having reviewed the record and the parties' arguments, the Court holds that there was reversible error in the district court's judgment. Therefore, the Court reverses the district court's judgment and renders judgment that the public information at issue in this case is not confidential under Government Code Section 531.1021. The appellee shall pay all costs relating to this appeal, both in this Court and the court below.