



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2013

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2013-02005

Dear Ms. Alexander:

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# 481874.

The Texas Department of Transportation (the "department") received a request for information pertaining to two specific Americans with Disabilities Act (the "ADA") requests. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information.<sup>1</sup>

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 exception encompasses information other statutes make confidential, such as the ADA. *See* 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA requires information about the medical conditions and medical histories of applicants or employees be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. 29 C.F.R. § 1630.14(c). An employer's medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as a confidential medical record. *Id.*; *see also* Open Records Decision No. 641

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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 that submitted to this office.

(1996). The federal Equal Employment Opportunity Commission (the "EEOC") has determined medical information for purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Federal regulations define "disability" for the purposes of the ADA as (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 29 C.F.R. § 1630.2(g). The regulations further provide that physical or mental impairment means: (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *See id.* § 1630.2(h). Upon review, we conclude the ADA is applicable to the submitted information. Thus, the department must withhold the submitted information under section 552.101 in conjunction with the ADA.<sup>2</sup>

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/eb

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 481874

Enc. Submitted documents

c: Requestor  
(w/o enclosures)