



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2013

Mr. Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2013-03246

Dear Mr. Aragón:

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# 479713.

The Texas Health and Human Service Commission (the "commission") received a request for information regarding allegations of Medicaid fraud against a named individual. You state you have released a copy of a specified final report to the requestor. You claim the submitted information is exempted 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.¹

Initially, we address your assertion that the submitted information is subject to two previous determinations issued as Open Records Letter Nos. 2004-8876 (2004) and 2004-8357 (2004). Open Records Letter Nos. 2004-8876 and 2004-8357 authorize the commission to withhold all information and materials compiled by the Office of the Inspector General of the Health and Human Services Commission (the "OIG") in connection with OIG investigations under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code without the necessity of requesting a ruling under the Act. However, because the laws on which Open Records Letter Nos. 2004-8876 and 2004-8357 were based have changed, the commission may no longer rely on them as previous determinations. *See*

¹We 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.

Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We will, however, address your argument against disclosure of this information.

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 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 [OIG] 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 [OIG] or the attorney general or their employees or agents involved in the audit or investigation conducted by the [OIG] 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.

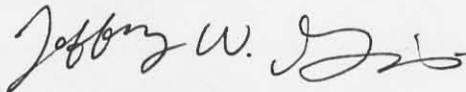
Id. § 531.1021(g), (h). You assert the submitted information is confidential under section 531.1021(g). Section 531.1021 is located in subchapter C of chapter 531 of the Government Code, titled “Medicaid and Other Health and Human Services Fraud, Abuse, or Overcharges.” The legislature’s amendment to 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. You indicate the OIG compiled the submitted information in connection with Medicaid fraud investigations. We therefore find the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code.

The commission asks this office to issue a previous determination permitting the commission to withhold information the OIG compiles in connection with a Medicaid fraud investigation under section 552.101 of the Government Code in conjunction with section 531.1021(g) of

the Government Code. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673 at 7–8. After due consideration, we have decided to grant the commission’s request. Therefore, this letter ruling serves as a previous determination under section 552.301(a) authorizing the commission to withhold information the OIG compiles in connection with a Medicaid fraud investigation under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code without the need of requesting a ruling from this office when requests for such information are not made by individuals or entities who are authorized to obtain such information under chapter 531 of the Government Code. *See, e.g.,* Gov’t Code §§ 531.1021(g) (information may be disclosed to state auditor’s office, law enforcement agencies, and other entities as permitted by other law), .1031 (permitting participating agencies to exchange criminal history record information relating to health care professional or managed care organization). So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 479713

Enc. Submitted documents

c: Requestor
(w/o enclosures)