



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2013

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2013-03606

Dear Mr. Smith:

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# 480294.

The Texas Health and Human Services Commission (the "commission") received a request for specified quarterly claims files submitted to the Centers for Medicare and Medicaid Services by the commission during a specified time period. You claim that 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 representative sample of information.¹ We have also received and considered comments from the requestor and an attorney for the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating 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.* § 552.101. This exception encompasses information other statutes make confidential. You

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

claim section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in part:

(a) Except for purposes directly connected with the administration of the [commission's] assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [commission] or acquired by employees of the [commission] in the performance of their official duties.

Hum. Res. Code § 12.003(a); *see also id.* § 21.012 (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs).² The term “assistance” in sections 12.003 and 21.012 includes “all forms of assistance and services for needy persons authorized by Subtitle C” of title 2 of the Human Resources Code. *Id.* § 11.001(4); *see also id.* § 31.001 *et seq.* (Hum. Res. Code title 2, subtitle C, Assistance Programs).

The requestor and the requestor's attorney both assert the requested information does not identify Medicaid patient recipients because the requestor has specifically excluded the MSIS identification number. However, in Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of [the commission's] clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses.” ORD 584 at 3. Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See also* 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. §§ 431.300 *et seq.*; Open Records Decision No. 166 (1977).

The commission states the submitted information relates to Medicaid recipients. The commission informs us the release of this information in this instance would not be for purposes directly connected with the administration of an assistance program. Based on these representations and our review, we conclude the commission must withhold the

²We note the former Texas Department of Human Services (“DHS”) ceased operations on September 1, 2004, and the commission now administers the Medicaid program formerly administered by DHS. *See* Health and Human Services Commission website at <http://www.hhsc.state.tx.us>; Act of June 2, 2003, 78th Leg., R.S., ch. 198, 2003 Tex. Gen. Laws 611.

submitted information under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.

You ask this office to issue a previous determination that would permit the commission to withhold information under section 552.101 of the Government Code in conjunction with sections 12.003 and 21.012 of the Human Resources Code without the necessity of requesting a decision from this office. 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, 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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', with a horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 480294

Enc. Submitted documents

c: Requestor
(w/o enclosures)