



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2013

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

OR2013-08442

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# 488224.

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified investigation. You state the commission has released some of the requested information but claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, you contend the submitted information is subject to Open Records Letter Nos. 2004-8876 (2004) and 2004-8357 (2004). These previous determinations permitted the commission to withhold certain information compiled and maintained by the commission's Office of Inspector General (the "OIG") under section 552.101 of the Government Code in conjunction with section 531.1012(g) of the Government Code, without requesting a decision from this office. However, as you acknowledge, in 2011 the Texas legislature amended section 531.1021(g). *See* Act of May 20, 2011, 82nd Leg., R.S., S.B. 688, § 4 (codified as section 531.1021(g) of the Government Code). Therefore, the law on which Open Records

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.

Letter Nos. 2004-8876 and 2004-8357 were based has changed and the commission may not rely on either of these rulings as previous determinations. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, we will address your argument under section 552.101 of the Government Code against disclosure of the submitted 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 [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 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 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. The information at issue is an investigation of a subcontractor’s alleged wrongful participation in the procurement and “statement of work” for a deliverables-based information technology services contract and relates to alleged conflict of interest and ineligibility to bid or contract. Upon review, we find you have failed to establish this information is related to Medicaid or other health and human services fraud, abuse, or overcharges. Therefore, you have not demonstrated the information is confidential

under section 531.1021 and the commission may not withhold it from release under section 552.101 of the Government Code on that basis.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.² Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has 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). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. We have marked information that the commission must withhold if section 552.117(a)(1) applies.³

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

³To the extent the employees’ social security numbers are not excepted from disclosure under section 552.117(a)(1), 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 under the Act.

(2) a motor vehicle title or registration issued by an agency of this state or another state or country; or

(3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

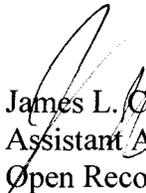
Gov't Code § 552.130(a). The commission must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, the commission must withhold the information we have marked under sections 552.102 and 552.130 of the Government Code. The commission must also withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees at issue made timely elections to keep the information confidential. The commission must release the remaining information.

Finally, you also ask this office to issue a previous determination permitting the commission to withhold OIG investigatory records under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code, without seeking a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 488224

Enc. Submitted documents

c: Requestor
(w/o enclosures)