



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2013

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

OR2013-19989

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# 505882.

The Health and Human Services Commission (the "commission") received a request for communications between the commission and a named doctor or his representatives during a specified period of time and internal commission communications pertaining to the named doctor or his hospitals during a specified period of time. You state the commission will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the e-mails we have marked are not responsive to the instant request for information because they originated after the date the request for information was received. This ruling does not address the public availability of non-responsive information, and the commission is not required to release non-responsive information in response to this request.

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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.

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 [Office of Inspector General of the commission (“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 state the information at issue was compiled by the Medicaid Fraud Unit of the Office of the Attorney General and by the OIG in connection with an audit or investigation concerning Medicaid and other health and human services fraud and abuse. Upon review, we conclude the commission must withhold the responsive information under section 552.101 in conjunction with section 531.1021(g).<sup>2</sup>

You 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); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). 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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the responsive 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 505882

Enc. Submitted documents

c: Requestor  
(w/o enclosures)