



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2014

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

OR2014-05103

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# 519704.

The Texas Health and Human Services Commission (the "commission") received a request for a specified report. The commission claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because it was created after the commission received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the commission is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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 the following:

(g) All information and materials subpoenaed or compiled by the [Office of Inspector General ("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 submitted responsive information was compiled by the OIG in connection with an investigation. We understand the investigation pertains to alleged Medicaid fraud. Based on your representation and our review, we conclude the commission must withhold the submitted responsive information under section 552.101 in conjunction with section 531.1021(g) of the Government Code.

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, the commission may not rely upon this ruling must 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.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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 519704

Enc. Submitted documents

c: Requestor
(w/o enclosures)