



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2014

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

OR2014-07711

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# 522138.

The Texas Health and Human Services Commission (the "commission") received a request for investigative documents pertaining to a specified grievance the requestor filed against the commission. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.139 of the Government Code. We have considered the exceptions you claim and reviewed 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 the following:

(g) All information and materials subpoenaed or compiled by the [Office of the Inspector General of the Health and Human Services Commission (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 consists of documents related to an internal personnel investigation into the alleged misconduct of commission employees. We find this information is not related to Medicaid or other health and human services fraud, abuse, or overcharges. Therefore, the commission may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.139 of the Government Code, which provides in relevant part the following:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Id. § 552.139(a). Section 2059.055(b) of the Government Code reads as follows:

Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You argue the information you have marked reveals technical details of the commission's computer network, provides a "road map for hackers," and poses a security threat to the commission. Based on your representations and our review, we find the information you have marked, as well as the additional information we have marked, relates to computer network security. Accordingly, the commission must withhold the information you have marked, as well as the information we have marked, under section 552.139 of the Government Code. You note the electronic document designated as IA 022814-01 is a recorded witness statement that contains a user's password. You state the commission lacks the technological capability to redact the confidential information in the audio recording. However, because the commission had the ability to copy the submitted audio recording for our review, we believe the commission has the capability to produce a copy of only the non-confidential portions of the audio recording. Therefore, we find the commission must withhold the stated user password in IA 022814-01 under section 552.139 of the Government Code, but may not withhold any of the remaining audio recording at issue under section 552.139 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, 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. *See id.* § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we marked under section 552.117(a)(1) of the Government Code. If the employees at issue did not timely request confidentiality under section 552.024, the commission may not withhold the information we marked under

section 552.117(a)(1).¹ However, the commission must withhold the cellular telephone numbers we marked only if a governmental body does not pay for the cellular telephone services.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the commission must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."² Gov't Code § 552.102(a). The Texas Supreme Court 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). As such, the commission must withhold the dates of birth we marked under section 552.102(a) of the Government Code.

In summary, the commission must withhold the information you have marked, as well as the information we have marked, under section 552.139 of the Government Code. The commission must withhold only the stated user password in the IA 022814-01 audio recording under section 552.139 of the Government Code. If the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we marked under section 552.117(a)(1) of the Government Code. However, the commission must withhold the cellular telephone numbers we have marked only if a governmental body does not pay for the cellular telephone services. The commission must withhold the information we marked under sections 552.130 and 552.102(a) of the Government Code. The remaining information must be released.

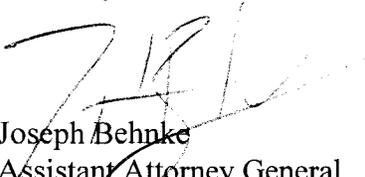
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹Regardless of the applicability of section 552.117 of the Government Code, 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. *See* Gov't Code § 552.147(b).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 522138

Enc. Submitted documents

c: Requestor
(w/o enclosures)