



November 14, 2001

Mr. Jim B. Simpson  
Assistant County Attorney  
County of Johnson  
2 North Main Street  
Cleburne, Texas 76031

OR2001-5275

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154851.

Johnson County Judge Roger Harmon (the "county") received a request for information regarding whether the county has paid for any health care, other than emergency care, immunizations, and treatment for communicable diseases, for illegal immigrants and how much the county has spent on such health care since 1997. Although you state that the county does not have a specific record of the data requested, you indicate that certain information maintained by the county could be used to ascertain the information. You claim that this 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.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the submitted information is confidential under sections 159.002 and 201.042 of the Occupations Code, sections 611.002 and 773.091 of the Health and Safety Code, article 20A.25 of the Insurance Code, and title 42, section 1320d-6 of the United States Code.

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<sup>1</sup>We 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.

Section 159.002 of the Occupations Code provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 201.042 of the Occupations Code and sections 611.002 and 773.091 of the Health and Safety Code similarly provide for the confidentiality of communications between patients and chiropractors, mental health professionals, or emergency medical services personnel as well as records of the identity, diagnosis, evaluation, or treatment of a patient by chiropractors, mental health professionals, or emergency medical services personnel that are created or maintained by chiropractors, mental health professionals, or emergency medical services personnel.

You have submitted forms IH-100, IH-101, and IH-104 as information responsive to the request. You indicate that form IH-100 is filled out by the person applying for assistance with payment for their medical care. You indicate that form IH-101 is filled out by a county employee under the supervision of a physician. Finally, you state that form IH-104 consists of "[a] computer tabulation of data including expenditures for the patient and the persons or entities to whom such expenditures were made." You do not indicate, nor does it appear, that either form IH-100 or IH-104 consists of a communication between a patient and a physician, chiropractor, mental health professional, or emergency medical services personnel. Furthermore, you do not indicate, nor does it appear, that either form IH-100 or IH-104 consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician, chiropractor, mental health professional, or emergency medical services personnel created or maintained by a physician, chiropractor, mental health professional, or emergency medical services personnel. Moreover, while you indicate that form IH-101 is completed under the supervision of a physician, we do not believe that form IH-101 consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician. Consequently, we find that none of the submitted information is confidential under section 159.002 of the Occupations Code, section 201.042 of the Occupations Code, section 611.002 of the Health and Safety Code, or section 773.091 of the Health and Safety Code.

Article 20A.25 of the Insurance Code states that

[a]ny data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person . . . .

A "health maintenance organization" is defined as "any person who arranges for or provides a health care plan to enrollees on a prepaid basis." You do not contend, nor do we believe, that the county is a health maintenance organization for the purpose of article 20A.25 of the Insurance Code. Consequently, we find that the submitted information is not confidential under that provision.

Title 42, section 1320d-6 of the United States Code provides:

(a) Offense

A person who knowingly and in violation of this part—

- (1) uses or causes to be used a unique health identifier;
- (2) obtains individually identifiable health information relating to an individual; or
- (3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b) of this section.

This offense clearly pertains to violations of part C, subchapter XI, chapter 7, title 42 of the United States Code. Part C requires the adoption of and compliance with standards for the electronic exchange of health information for certain enumerated financial and administrative transactions. 42 U.S.C. § 1320d-1(a), 2(a)(1). While section 1320d-6 may criminalize the release of individually identifiable health information in the context of this standardized electronic exchange forum, we do not believe that it makes the submitted forms confidential for the purpose of the Public Information Act. *See* Open Records Decision Nos. 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

Consequently, we conclude that you must release the responsive information, including the information you have redacted on form IH-104.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

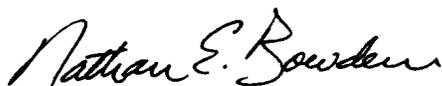
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 154851

Enc: Submitted documents

c: Mr. Richard Eason  
2909 County Road 1110  
Rio Vista, Texas 76093  
(w/o enclosures)