



April 16, 2002

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2002-1918

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161373.

The Texas Health and Human Services Commission (the "commission") received a request for the record of a complaint filed against a named physician and the report of the disposition of that complaint. You state that you have sent a redacted copy of these documents to the requestor.¹ You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code and sections 12.003 and 21.002 of the Human Resources Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

¹ We note that you have highlighted the information you redacted from documents you have provided to the requestor. You have also withheld certain whole documents; you have marked these pages with red and yellow flags. The submitted documents that you have not marked or highlighted we assume you have released to the requestor.

Gov't Code § 552.022(a)(1). The submitted documents pertain to an investigation completed by the commission. Thus, the commission must release this information, unless it is expressly confidential under other law. You claim that a portion of the submitted documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. You assert that additional portions of the submitted documents are excepted from disclosure under section 552.101 in conjunction with sections 12.003 and 21.002 of the Human Resources Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information made confidential by other statutes. We therefore consider your claims under section 552.101 to determine if the information you have flagged and highlighted is expressly confidential under other law.

You assert that the documents you have marked with red flags are confidential under the MPA. We agree that the red-flagged documents are medical records, access to which is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). The documents at issue contain medical records and information that appears to have been directly obtained from medical records and communications. The submitted documents marked with red flags may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

Next, we note that section 12.003 of the Human Resources Code prohibits the disclosure of information concerning clients of a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* Hum. Res. Code §§ 12.003, 21.012; *see also* 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.301; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 provides:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department's assistance programs to purposes directly connected with administration of programs); *see also* Open Records Decision No. 166 (1977). You assert that some of the submitted documents contain information concerning clients of a state plan for medical assistance. The documents reflect that the information was acquired by employees of the department in the performance of their official duties. Furthermore, it appears that release here is not for purposes directly connected with the administration of the commission's medical assistance program. We determine that the documents containing this information constitute "any information concerning" persons applying for or receiving assistance. Consequently, we agree that you must withhold some of the documents you have marked with yellow flags and some of the highlighted information from disclosure under section 552.101 in conjunction with section 12.003 of the Human Resources Code. Some of the documents you have marked, however, do not mention, refer to, or in any way identify clients, applicants, or recipients of public assistance. We do not believe that this information may be withheld under the rationale of Open Records Decision No. 584 (1991). We have marked the information that is not confidential under section 12.003 and must be released to the requestor.

In summary, we conclude that (1) the documents marked with red flags are medical records and may be released only as provided under the MPA; (2) a portion of the redacted documents are confidential under section 12.003 of the Human Resources Code. The remainder of the redacted documents, which we have marked, must be released to the requestor.

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); *Texas Department of Public 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 161373

Enc: Submitted documents

c: Mr. Bruce P. Meyers, M.D.
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(w/o enclosures)