



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2004

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

OR2004-4455

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# 202598.

The Health and Human Services Commission (the "commission") received a request for all information concerning the commission's investigation of a named individual for Medicaid fraud. You claim that the requested 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.¹

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential under section 531.1021 of the Government Code. Section 531.1021(g) provides as follows:

All information and materials subpoenaed or compiled by the [OIG] in connection with an investigation are confidential and not subject to disclosure

¹We 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.

under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or its employees or agents involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

The commission's Office of Inspector General (the "OIG") is responsible for the investigation of fraud and abuse in the Medicaid program and the enforcement of state law relating to the provision of those services. *See* Gov't Code § 531.1021(a). You state that "[a]ll of the requested information was compiled by the Commission in connection with a pending Medicaid fraud and abuse investigation" and that "[t]his information is maintained by the Commission's OIG."

The detection of fraud and abuse by the commission was, prior to the passage of House Bill 2292, handled by the commission's Office of Investigations and Enforcement ("OIE"). Effective September 1, 2003, the legislature created the OIG to consolidate compliance and enforcement activities currently taking place across HHSC agencies. The OIG has been given some of the duties formerly belonging to the OIE. Section 531.1021(g) clearly states that all materials subpoenaed or compiled by the OIG in connection with an investigation are confidential. Thus, any files that may have been transferred from the OIE to the OIG that relate to open and ongoing investigations by the OIG can be said to have been "compiled" by the OIG. We believe the plain language of the statute, then, clearly applies to files of this sort, as well as to any future files "subpoenaed or compiled" by the OIG; therefore, we conclude that the submitted information is confidential under section 531.1021(g) and must be withheld under section 552.101.²

You ask this office to issue a previous determination authorizing the commission to withhold all information for similar requests regarding fraud investigation by the commission. We decline to issue such a previous determination at this time. *See* Open Records Decision No. 673 (2001). Therefore, this letter ruling is limited to the particular records at issue in this request and to the facts as presented to us. 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

²Because we are able to resolve this under section 531.1021, we do not address your other arguments for exception.

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).

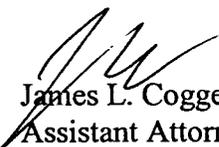
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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. 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 202598

Enc. Submitted documents

c: Mr. Michael J. Cisneros
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(w/o enclosures)