ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2006

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2006-11009

Dear Ms. Alexander:

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# 259796.

The Texas Department of Transportation (the "department") received a request for information pertaining to the medical transportation program, including a list of the medical transportation providers, in Bexar County from January 2004 to July 2006. You state that the department has released the requested list of medical transportation providers. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

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 other statutes make confidential.

[1]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.

You argue that the submitted information is excepted from disclosure under section 552.101 in conjunction with section 12.003 of the Human Resources Code. Federal and state statutes prohibit the disclosure of information concerning a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* 42 U.S.C. § 1396a(a)(7); Hum. Res. Code §§ 12.003, 21.012; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides in relevant part:

> (a) Except for purposes directly connected with the administration of the [Texas Department of Human Services'] 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 of Human Services] 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 of Human Services'] clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." ORD 584 at 3. 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 also* 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. §§ 431.300 *et seq.*; Hum. Res. Code § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 166 (1977). Further, section 21.012(b) provides that a governmental body other than the Department of Human Services that holds client information must provide safeguards restricting the use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of the assistance programs. *See* Hum. Res. Code § 21.012(b).

You state that the department administers services to Medicaid clients through the Medical Transportation Program, and that the submitted information relates to this program. We understand that Medicaid is a medical assistance program administered by the Department of Human Services. You indicate that the submitted information contains individual client information, and that the disclosure of this information would not be a release for purposes directly connected with the administration of the assistance program. Based on your representations and our review of the information at issue, we agree that the submitted information is confidential under section 12.003 of the Human Resources Code.

Accordingly, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

Shelli Egger

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 259796

Enc. Submitted documents

c: Mr. Joe Conger
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(w/o enclosures)