



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2009

Ms. Rebecca Marquez
Regional Services Attorney
Texas Health and Human Services Commission
P.O. Box 16017
Houston, Texas 77222

OR2009-05172

Dear Ms. Marquez:

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# 340256.

The Texas Health and Human Services Commission (the "commission") received a request for sixteen categories of information concerning the requestor's client, a former commission employee.¹ We understand you have released a portion of the responsive information to the requestor. You claim that a portion of the submitted 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.²

¹We note that the commission asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information)

²We 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.

Initially, we note that the requestor informed the commission and our office that he now only seeks specified e-mails and correspondence. Accordingly, the commission withdrew its request for a ruling with respect to Exhibits B-2 through B-8. Therefore, only Exhibit B-1 is now responsive to the request. This ruling does not address the public availability of the remaining non-responsive information, and the commission is not required to release non-responsive information in response to this request. However, we will address the commission's arguments against disclosure of Exhibit B-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. You argue that a portion of the submitted information is excepted from disclosure under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in relevant part:

(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); *see also id.* § 21.012 (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).³ The term "assistance" in sections 12.003 and 21.012 includes "all forms of assistance and services for needy persons authorized by Subtitle C" of title 2 of the Human Resources Code. *Id.* § 11.001(4); *see also id.* § 31.001 *et seq.* (Hum. Res. Code tit. 2, subtit. C, Assistance Programs).

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." Open Records Decision No. 584 at 3 (1991). Consequently, it is the specific information

³We note that the former Texas Department of Human Services ("DHS") ceased operations on September 1, 2004, and that the Texas Health and Human Services Commission now administers the Medicaid program formerly administered by DHS. *See* Health and Human Services Commission website at <http://www.hhsc.state.tx.us>; Act of June 2, 2003, 78th Leg., R.S., ch. 198, 2003 Tex. Gen. Laws 611.

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).

You state that some of the submitted information identifies or could lead to the identification of recipients of assistance under the Medicaid, Food Stamp, and Temporary Assistance for Needy Families programs. You also state that the release of this information in this instance would not be for purposes directly connected with the administration of these programs.⁴ Based on your representations and our review of the submitted information, we conclude that some of the information at issue concerns clients of the commission's assistance programs and thus is confidential under section 12.003 of the Human Resources Code. The commission must withhold that information, which we have marked, under section 552.101 of the Government Code. You have not demonstrated, however, that any of the remaining information at issue discloses information concerning individual applicants or recipients of commission benefits. Therefore, the commission may not withhold any of the remaining information on that basis under section 552.101 in conjunction with section 12.003 of the Human Resources Code. As you raise no other exceptions to disclosure, the remaining information in Exhibit B-1 must be released to the requestor.⁵

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.

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.oag.state.tx.us/open/index_orl.php, 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

⁴You also state that under section 272.1 of title 7 of the Code of Federal Regulations, information relating to a recipient of Food Stamps may be released to "a responsible member of the household, its currently authorized representative, or a person acting on its behalf[.]" 7 C.F.R. § 272.1(c)(3). You inform us that the commission has no basis on which to conclude that the requestor is acting as a representative of any Food Stamp recipient identified in Exhibit B-1.

⁵We note that the information being released contains information that is confidential to the general public but to which the requestor has a special right of access under section 552.023 of the Government Code. If the commission receives another request for this information from someone other than the requestor or the requestor's authorized representative, the commission should seek another ruling from this office at that time.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal stroke extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 340256

Enc. Submitted documents

c: Requestor
(w/o enclosures)