



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-05913

Dear Mr. Smith:

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# 451735 (OR-20120202-6595).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to complaints about the Medicaid Medical Transportation Program. You claim some of 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 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 raise 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:

¹We assume 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.

(a) Except for purposes directly connected with the administration of the [commission'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 [commission] or acquired by employees of the [commission] 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).² 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 [commission] 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); Open Records Decision No. 166 (1977).

You seek to withhold portions of the information at issue that identify and relate to Medicaid recipients. You inform us, in this instance, the release of this information would not be for purposes directly connected with the administration of a health and human services program. Based on your representations and our review, we conclude the information you have marked, in addition to the information we have marked, is confidential under section 12.003 of the Human Resources Code and must be withheld under section 552.101 of the Government Code. As you raise no other exceptions to disclosure, the remaining information at issue must be released to the requestor.

²We note the former Texas Department of Human Services (“DHS”) ceased operations on September 1, 2004, and the 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.

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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 451735

Enc. Submitted documents

c: Requestor
(w/o enclosures)

SC OCT 13 2015
At 9:49 A.M.
Velva L. Price, District Clerk

No. D-1-GV-12-000649

TEXAS HEALTH AND HUMAN
SERVICES COMMISSION,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT

419th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Chapter 552 of the Texas Government Code, in which Plaintiff Texas Health and Human Services Commission (Commission), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, the Commission, and Defendant Ken Paxton, Attorney General of Texas¹ (Attorney General), arising out of this lawsuit have been resolved, and the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that in compliance with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Ms. Donna Ressler, on _____, 2015, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that the Commission must withhold portions of the information at issue.

¹ Greg Abbott was sued in his official capacity as the Attorney General of Texas. Ken Paxton is now the Attorney General of Texas and is the proper defendant in this lawsuit.



The requestor was also informed of her right to intervene in the suit to contest the Commission's right to withhold the information. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The "information at issue" consists of the records of Medicaid recipients' complaints concerning the Commission's Medical Transportation Program, recorded in the Health and Human Service Enterprise Administrative Report and Tracking System database (HEART). Portions of the information at issue, specifically the information listed in Paragraph 2A of this Judgment, is confidential pursuant to Texas Government Code section 552.101, in conjunction with Human Resources Code sections 12.003 and 12.012.

2. The Commission must withhold from the requestor the information listed in Paragraph 2A of this Judgment. The Commission must release all other requested information to the requestor, including the information listed in Paragraph 2B of this Judgment.

2A. *Withhold*

Tracking Number
 Caller First Name
 Caller Last Name
 Caller Phone Number
 Alternative Phone Number
 Relationship to Client

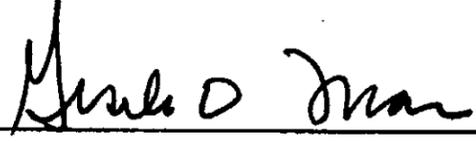
2B. *Release*

Action Type
 Request Type
 Date/Time Open
 Nature of Issue
 Assignment Recipient
 Status

Client First Name	Resolution
Client Last Name	Assignment Due Date
Client Date of Birth	Date/Time Assigned
Client Authorized Representative	Date/Time Closed
Client Physical Address 1	Email of Recipient
Client Physical Address 2	Ext
Client State	How Resolved
Client City	Not received within time-frame
Client Zip Code	Ombudsman
Client County	Received by
Case Details	Response Due Date
Contractor Response	Responsible Person
Date/Time of Appointment	TSA
Eligibility Number	TSAP
Is FREW	Wrong Phone Number Called

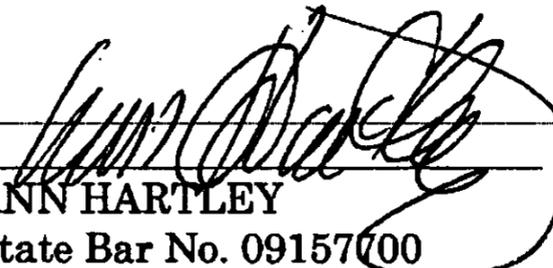
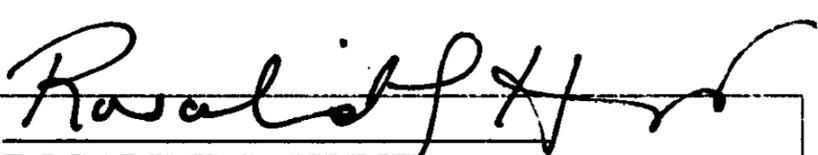
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between the Commission and the Attorney General and is a final judgment.

SIGNED the 13th day of OCTOBER, 2015.



 PRESIDING JUDGE

AGREED:

 <p>ANN HARTLEY State Bar No. 09157700 Assistant Attorney General Financial Litigation, Tax, and Charitable Trusts Division P.O. Box 12548, MC 017-6 Austin, TX 78711-2548 (512) 936-1313 - Phone (512) 477-2348 - Fax ann.hartley@texasattorneygeneral.gov</p> <p>ATTORNEYS FOR PLAINTIFF, TEXAS HEALTH AND HUMAN SERVICES COMMISSION</p>	 <p>ROSALIND L. HUNT State Bar No. 24067108 Assistant Attorney General Administrative Law Division Office of the Attorney General of Texas P.O. Box 12548, Capitol Station Austin, Texas 78711-2548 Telephone: (512) 475-4166 Facsimile: (512) 457-4677 Rosalind.Hunt@texasattorneygeneral.gov</p> <p>ATTORNEY FOR DEFENDANT, ATTORNEY GENERAL OF TEXAS</p>
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