



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 17, 2014

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
Mail Code - 1070  
P.O. Box 13247  
Austin, Texas 78711

OR2014-10391

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# 526135.

The Texas Health and Human Services Commission (the "commission") received a request for (1) transaction records for 2013 for certain Supplemental Nutrition Assistance Program ("SNAP") retailers, (2) the total volume of SNAP and Temporary Assistance for Needy Family ("TANF") program transactions for those retailers, (3) the most recent lists of TANF-only retailers, and (4) correspondence regarding "questionable retailers." You state the commission has no responsive information regarding TANF program transactions.<sup>1</sup> You claim 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.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We 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.

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. Section 552.101 encompasses information protected by other statutes, such as section 278.1(q) of title 7 of the Code of Federal Regulations. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision Nos. 476 (1987), 226 (1979). Section 278.1(q) provides in part:

(q) Use and disclosure of information provided by firms. With the exception of [employee identification numbers (“EINs”)] and [social security numbers (“SSNs”)], any information collected from retail food stores and wholesale food concerns, such as ownership information and sales and redemption data, may be disclosed for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations, and can be disclosed to and used by State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Such information may also be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing other Federal or State law, and the regulations issued under such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of [the United States Department of Agriculture Food and Nutrition Service (“FNS”)] to accomplish an FNS function. Such purposes include the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to [EINs] are contained in paragraph (q)(2) of this section. Safeguards with respect to [SSNs] are contained in paragraph (q)(3) of this section.

7 C.F.R. § 278.1(q). You contend the submitted information, which pertains to aggregated SNAP merchant transactions, is confidential under section 278.1(q). You state the requestor does not represent any of the entities authorized to receive such information. Upon our review, we determine the commission must withhold the submitted information from disclosure under section 552.101 of the Government Code in conjunction with section 278.1(q) of title 7 of the Code of Federal Regulations.<sup>3</sup>

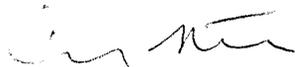
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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 526135

Enc. Submitted documents

c: Requestor  
(w/o enclosures)