



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2014

Mr. Jorge L. Trevino, Jr.  
Assistant County Attorney  
Webb County  
1110 Washington Street, Suite 301  
Laredo, Texas 78040

OR2014-10563

Dear Mr. Trevino:

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# 526469.

Webb County (the "county") received a request for "all of the names of the persons that were screened and approved for services by the Webb County Indigent Care Department for the period between September 2013 and February 06, 2014."<sup>1</sup> You state you will redact social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>3</sup> You inform us you have notified the individuals whose personal information is at

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<sup>1</sup>We note the county asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup>Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>3</sup>Although you also raise section 552.137, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. See Gov't Code §§ 552.301, .302.

issue pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor and other interested third parties. *See id.* § 552.304.

Initially, you claim the request requires the county to create information. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request for information under the Act. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must make a good-faith effort, however, to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the county has done so.

Next, we note the requestor seeks only the names of the individuals who were screened and approved for services by the Webb County Indigent Care Department for a specified time period. Thus, the portions of the submitted documents that do not consist of the names of the individuals at issue are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the county is not required to release that information in response to the request.<sup>4</sup>

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 exception encompasses information other statutes make confidential. You claim the responsive information is protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *Id.* § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments, or the arguments submitted by the third parties, against disclosure of this non-responsive information.

to the extent such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. *See id.* § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We, therefore, held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the county may not withhold any portion of the responsive information on this basis.

Section 552.101 of the Government Code also encompasses section 181.006 of the Health and Safety Code, which provides:

[F]or a covered entity that is a governmental unit, an individual’s protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines “covered entity” to include

any person who: for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2)(A). You assert the county is a covered entity for purposes of section 181.006 of the Health and Safety Code. You indicate the county is in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information necessary to pay claims from providers and track the health care services being provided through its indigent care program. However, in order to determine whether the

county is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether the county engages in the practice of assembling, collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states that “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by [HIPAA].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(I) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 160.103. You assert the responsive information was received by the county as a health care clearinghouse and relates to the provision of health care to the named individuals and to the future payment for the provision of health care to the individuals at issue. Upon review, we find the county has not explained how the county meets the definition of a health care clearinghouse and thus has failed to explain how it is a covered entity for purposes of section 181.006 of the Health and Safety Code. *See id.* (defining clearinghouse). Accordingly, the county may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 181.006 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 81.046 of the Health and Safety Code, which provides in relevant part:

(a) Reports, records, and information furnished to a health authority or the [Texas Department of Health] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c), (d), and (f).

Health & Safety Code § 81.046(a)-(b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies. *See* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). We understand you to assert section 81.046 for some of the responsive information. However, upon review, we find the county has failed to establish any portion of the responsive information is confidential under section 81.046 of the Health and Safety Code. Accordingly, the county may not withhold any of the submitted information under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, we note there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the county may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy. As you raise no other exceptions to disclosure of the responsive information, the county must release it to the requestor.

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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 526469

Enc. Submitted documents

c: Requestor  
(w/o enclosures)