



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2014

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

OR2014-10989

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# 527705.

The Texas Health and Human Services Commission (the "commission") received a request for all correspondence from Texas Medicaid and Healthcare Partnership ("TMHP") to the commission for a specified time period "referencing each of the exceptional circumstances appeals for items of durable medical equipment . . . filed during [the specified time period] and requesting review by [the commission's] Office of Medical Director" and all correspondence from TMHP to the commission responding to the aforementioned correspondence and stating the outcome of the appeals. 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 information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note some of the submitted information is not responsive to the present request for information because it was either created after the present request for information was

received or was created outside the time period specified in the request.¹ This ruling does not address the public availability of any information that is not responsive to the request, and the commission need not release such information, which we have marked, in response to this request.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 of the Government Code encompasses sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 provides in relevant part:

(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). 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 title 2, subtitle 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 commission’s] 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.*; Open Records Decision No. 166 (1977).

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

You assert the information at issue consists of communications regarding the appeals of denials of durable medical equipment to individual recipients of Medicaid, which is a program the commission administers. You inform us the release of this information in this instance would not be for purposes directly connected with the administration of an assistance program. Based on your representations and our review, we conclude the commission must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.

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, 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 "Lindsay E. Hale". The signature is fluid and cursive, with the first name being the most prominent.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 527705

Enc. Submitted documents

c: Requestor
(w/o enclosures)