



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2014

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

OR2014-13108

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# 530787.

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to investigations involving the requestor and a named living center. You state you have released some information. 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.

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 protected by other statutes, including section 531.1021 of the Government Code, which provides in relevant part the following:

(g) All information and materials subpoenaed or compiled by the [Office of the Inspector General of the Health and Human Services Commission (the "OIG")] in connection with an audit or investigation or by the office of the attorney general in connection with a Medicaid fraud investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or the attorney general or their

employees or agents involved in the audit or investigation conducted by the office or the attorney general, except that this information may be disclosed to the state auditor's office, law enforcement agencies, and other entities as permitted by other law.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

*Id.* § 531.1021(g), (h). You assert the submitted information is confidential under section 531.1021(g). Section 531.1021 is located in subchapter C of chapter 531 of the Government Code, titled "Medicaid and Other Health and Human Services Fraud, Abuse, or Overcharges." The legislature's amendment to section 531.1021(g) added express language stating information connected to investigations of Medicaid fraud is confidential. Section 531.102, also found in subchapter C, further specifies the OIG "is responsible for the investigation of fraud and abuse in the provision of health and human services[.]" *Id.* § 531.102(a). Thus, subchapter C addresses the responsibilities of the OIG in conducting investigations of Medicaid and other health and human services fraud and abuse. Therefore, section 531.1021 applies only to audits and investigations of Medicaid and other health and human services fraud and abuse. The information at issue consists of documents related to internal personnel investigations into the alleged misconduct of commission employees. We find this information is not related to Medicaid or other health and human services fraud, abuse, or overcharges. Therefore, the commission may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."<sup>1</sup> *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). As such, the commission must withhold the date of birth we marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). Whether a particular item of information is

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we marked under section 552.117(a)(1) of the Government Code. If the employee at issue did not timely request confidentiality under section 552.024, the commission may not withhold the information we marked under section 552.117(a)(1).<sup>2</sup>

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the commission must withhold the information we have marked under section 552.130 of the Government Code.

In summary, if the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we marked under section 552.117(a)(1) of the Government Code. The commission must withhold the information we marked under sections 552.102 and 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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.

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<sup>2</sup>Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code 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. *See* Gov't Code § 552.147(b).

<sup>3</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Because such information is confidential with respect to the general public, if the commission receives another request for this information from a different requestor, then the commission should again seek a ruling from this office.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 530787

Enc. Submitted documents

c: Requestor  
(w/o enclosures)