



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 27, 2015

Ms. Caroline L. Cross  
Assistant District Attorney  
Civil Division  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202

OR2015-08057

Dear Ms. Cross:

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# 561210.

Dallas County Health and Human Services ("DCHHS") received a request for information pertaining to a named individual and her residency at a specified address. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also inform us you notified the family of the deceased individual whose information is at issue of DCHHS's receipt of the request for information and of the family's right to submit arguments to this office as to why the requested information should not be released. *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.<sup>1</sup>

---

<sup>1</sup>We assume that 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.” *Id.* § 552.101. This section encompasses information other statutes make confidential. DCHHS raises the Privacy Act of 1974, section 552a of title 5 of the United States Code (“Federal Privacy Act”). However, the Federal Privacy Act applies only to a federal agency. *See* 5 U.S.C. §§ 552(f), 552a(a). State and local government agencies are not covered by the Federal Privacy Act. *See Davidson v. Georgia*, 622 F. 2d 895, 896 (5th Cir. 1980); *see also* Attorney General Opinion MW-95 (1979). Because DCHHS is not a federal agency, it is not bound by the Federal Privacy Act’s confidentiality provisions, as would be a federal agency. *See* 5 U.S.C. §§ 552a(a)(1), 552(f) (defining “agency” for purposes of Federal Privacy Act). Therefore, DCHHS may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the Federal Privacy Act.

We understand you to contend the information at issue may be revealed only as provided by section 3544 of title 42 of the United States Code. Section 552.101 of the Government Code also encompasses section 3544(b) of title 42 of the United States Code which permits the Secretary of the Department of Housing and Urban Development (“HUD”) to require an applicant or participant of any HUD program to consent to the release of salary, wage, and unemployment compensation information as a condition of initial or continuing eligibility and to assure that the level of benefits provided is correct. 42 U.S.C. § 3544(b). In pertinent part, the relevant statute reads as follows:

In order to protect applicants for, and recipients of, benefits under the programs of . . . [HUD] from the improper use of information obtained pursuant to the requirements of section 503(i) of this title from the State agency charged with the administration of the State unemployment compensation law, pursuant to section 3(d)(1) of the United States Housing Act of 1937 [42 U.S.C.A. § 1437a(d)(1)] from the applicant or participant, or pursuant to section 6103(l)(7)(D)(ix) of Title 26 from the Commissioner of Social Security or the Secretary of the Treasury, officers and employees of . . . [HUD] and (in the case of information obtained pursuant to such section 503(i) or 3(d)(1) [42 U.S.C.A. § 1437a(d)(1)]), representatives of public housing agencies may only use such information--

(i) to verify an applicant’s or participant’s eligibility for or level of benefits;  
or

(ii) in the case of an owner or public housing agency responsible for determining eligibility for or level of benefits, to inform such owner or public housing agency that an applicant’s or participant’s eligibility for or level of benefits is uncertain and to request such owner or public housing agency to verify such applicant’s or participant’s income information.

*Id.* § 3544(c)(2)(A). This statute protects applicants for, and recipients of, benefits under HUD programs from the improper use of salary, wage, or unemployment compensation information obtained pursuant to the requirements of the three referenced federal statutes and used to verify an applicant's or participant's eligibility or income. *Id.* Therefore, to the extent DCHHS obtained any of the information at issue pursuant to the requirements of any of the three referenced federal statutes and the information was used to verify an applicant's or participant's eligibility or income, we find section 3544(c)(2)(A) is applicable, and DCHHS must withhold such information under section 552.101 of the Government Code.<sup>2</sup> However, to the extent DCHHS did not obtain the information at issue pursuant to the requirements of the three referenced federal statutes and the information was not used for verification purposes, section 3544(c)(2)(A) is not applicable, and none of it may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of his income[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find none of the information at issue consists of confidential tax return information and, therefore, none of it may be withheld under section 552.101 in conjunction with section 6103 of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses information protected by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in

---

<sup>2</sup>In that event, as our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Additionally, information taken directly from medical records and contained in other documents can be withheld in accordance with the MPA. *See* Occ. Code §§ 159.002, .004. Section 159.001 of the MPA defines "patient" as a person who consults with or is seen by a physician to receive medical care. *See id.* § 159.001(3). Under this definition, a deceased person cannot be a patient under section 159.002 of the MPA. *See* ORDs 487, 370, 343. Thus, the MPA is applicable only to records related to a person who was alive at the time of diagnosis, evaluation, or treatment to which the records pertain. Upon review, we find none of the information at issue constitutes medical records subject to the MPA. Therefore, none of the submitted information may be withheld under section 552.101 on the basis of the MPA.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). Thus, information pertaining solely to a deceased individual may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find DCHHS has failed to demonstrate any portion of the

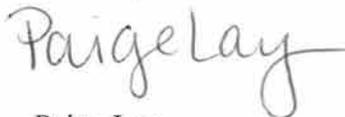
information is highly intimate or embarrassing and of no legitimate public interest. Thus, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent DCHHS obtained any of the information at issue pursuant to the requirements of any of the three referenced federal statutes and the information was used to verify an applicant's or participant's eligibility or income, section 3544(c)(2)(A) is applicable and DCHHS must withhold such information under section 552.101 of the Government Code. DCHHS must release the remaining 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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/akg

Ref: ID# 561210

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)