



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Ms. Sylvia Hardman-Dingle
General Counsel
Office of General Counsel
Texas Department of Assistive and Rehabilitative Services
MC-1419
4800 North Lamar Boulevard, Suite 300
Austin, Texas 78756

OR2015-17236

Dear Ms. Hardman-Dingle:

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# 576323.

The Texas Department of Assistive and Rehabilitative Services ("DARS") received a request for the entire contents of the requestor's vocational rehabilitation file. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have marked some of the submitted information as not responsive to the instant request because it was created after the date the request was received. This ruling

¹We note DARS may have violated section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, section 552.101 is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding DARS's possible violation of section 552.301 in requesting this decision.

does not address the public availability of non-responsive information, and DARS is not required to release such information in response to this request.

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. The purpose of chapter 111 of the Human Resources Code is to provide rehabilitation and related services to eligible individuals with disabilities so they may prepare for and engage in a gainful occupation or achieve maximum personal independence. *See* Hum. Res. Code § 111.001. Section 111.018(b) of the Human Resources Code reads as follows:

In carrying out his or her duties under this chapter and Subchapter F, Chapter 117, the commissioner [of DARS] shall, with the approval of the executive commission, implement policies addressing . . . the protection of records and confidential information . . . and other regulations relating to this chapter or Subchapter F, Chapter 117, as necessary to carry out the purposes of this chapter and Subchapter F, Chapter 117.²

Id. § 111.018(b). Under the authority of section 111.018(b), DARS promulgated section 101.809 of title 40 of the Texas Administrative Code, which reads as follows:

(a) Consumer records.

(1) All personal information available to DARS employees as they administer rehabilitation services programs, including names, addresses, and records of consumer evaluations, is confidential.

(2) DARS may use such information and records only for purposes directly connected with administering the rehabilitation programs.

(3) DARS may directly or indirectly disclose information only in administering the rehabilitation programs, except with the consumer’s written consent, in compliance with a court order, or in accordance with a federal or state law or regulation. DARS may not share information containing identifiable personal information with advisory or other bodies that do not have official responsibilities for administration of the programs.

²The 78th Legislature transferred all powers, duties, functions, programs, and activities of the former Texas Rehabilitation Commission to DARS effective March 1, 2004. *See* Act of June 1, 2003, 78th Leg., R.S., ch. 198, §§ 1.01, 1.21, 1.26, 2003 Tex. Gen. Laws 611, 612, 641.

(4) Upon a consumer's request, DARS releases information to a consumer or, as appropriate, his parent, guardian, or other representative. If, in the opinion of the counselor, release to the consumer of a particular document in the consumer case file will have a harmful effect on the consumer, the consumer will be notified that there is information in the case file that can be released only to an appropriate representative designated in writing by the consumer.

(5) All consumer information is the property of DARS.

(b) Other records.

(1) Release of consumer records must be made in accordance with federal law and regulations.

(2) DARS may provide to and receive from any state agency other nonconfidential information for the purpose of increasing and enhancing services to consumers and improving agency operations.

40 T.A.C. § 101.809; *see also* 29 U.S.C. § 721(a)(10)(F) (discussing confidentiality of identities of applicants and eligible individuals under federal Rehabilitation Act of 1973 and its amendments, 29 U.S.C. §§ 701-751); 34 C.F.R. § 361.38(a)(1) (same). You represent the information you have marked consists of the names and identification numbers of consumers of rehabilitation services programs. *See* 40 T.A.C. § 101.809(a)(1). We note the requestor has not provided a release from any of these consumers, established he will use this information in a vocational rehabilitation program, or demonstrated any other exceptions allowing disclosure apply. Therefore, we agree DARS must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 101.809 of title 40 of the Texas Administrative Code.³ DARS must release the remaining responsive 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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 576323

Enc. Submitted documents

c: Requestor
(w/o enclosures)