



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 11, 2015

Ms. Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2015-18971

Dear Ms. Ray:

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# 578852.

The Texas Health and Human Services Commission (the "commission") received a request for specified Medicaid drug claims data pertaining to the Medicaid Drug Rebate Program.<sup>1</sup> 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 representative sample of information.<sup>2</sup>

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<sup>1</sup>We note the commission sought and received clarification of the information requested. See Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume 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 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.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 12.003 of the Human Resources Code. Section 12.003 of the Human Resources Code provides, in relevant part:

(a) Except for purposes directly connected with the administration of the assistance programs of the [Texas Health and Human Services Commission (the “commission”)] or Department of Aging and Disability Services [(the “department”)], as applicable, 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 department or acquired by employees of the commission or department in the performance of their official duties.

Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 4.003, 2015 Tex. Sess. Law Serv. 1, 679 (Vernon). The term “assistance” in section 12.003 includes “all forms of assistance and services for needy persons authorized by Subtitle C” of title 2 of the Human Resources Code. Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 4.002, 2015 Tex. Sess. Law Serv. 1, 678 (Vernon); *see also id.* ch. 31 *et seq.* (Assistance Programs). In Open Records Decision No. 584 (1991), this office concluded “[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.*; Act of March 30, 2015, 84th Leg., R.S. ch. 1, § 4.007. 2015 Tex. Sess. Law Serv. 1, 680 (Vernon); Open Records Decision No. 166 (1977).

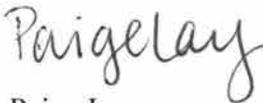
You assert the submitted information could lead to the identification of Medicaid recipients. You state the prescription numbers are unique and can identify the specific Medicaid clients to whom the prescriptions belong. Upon review, we find the prescription numbers are confidential under section 12.003 of the Human Resources Code. Thus, the prescription numbers must be withheld under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. However, we find the remaining information consists of general claim information, rather than identifying information of Medicaid recipients. Consequently, we find the commission may not withhold the remaining information under section 552.101 of the Government Code in conjunction with

section 12.003 of the Human Resources Code. The commission 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 578852

Enc. Submitted documents

c: Requestor  
(w/o enclosures)