



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2015-14598

Dear Mr. Miles:

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# 615816.

The Texas Health and Human Services Commission (the "commission") received a request for all cellular telephone or text message communications by a named individual during a specified time period. You claim therequested information is excepted from disclosure under sections 552.101 through 552.151 of the Government Code. We have considered the submitted arguments.

Initially, we note some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-14469 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the commission must continue to rely on Open Records Letter No. 2016-14469 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested

information is not subject to the previous ruling, we will consider your arguments against disclosure of the information at issue.

Next, we must address the commission's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The commission received the instant request on April 5, 2016. As of the date of this letter, you have not submitted written comments stating the reasons why the claimed exceptions apply or a copy of the specific information requested or representative samples. Consequently, we find the commission failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise discretionary exceptions to disclosure, these sections protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Accordingly, because you have failed to comply with the requirements of the Act, the commission has waived its claimed discretionary exceptions to disclosure. *See* ORD 663 at 5. Additionally, although you have also raised mandatory exceptions to disclosure, as you have not submitted the requested information for our review, we cannot find any of the information excepted from disclosure or confidential by law. Therefore, we have no choice but to order the commission to release the responsive information in accordance with section 552.302.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the commission must continue to rely on Open Records Letter No. 2016-14469 as a previous determination and withhold or release the identical

information at issue in accordance with that ruling. To the extent the requested information is not subject to the previous ruling, the commission must release the responsive information in accordance with section 552.302 of the Government Code. If the commission believes the information is confidential and may not lawfully be released, the commission must challenge this ruling in court pursuant to 552.324 of the Government 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](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 "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/akg

Ref: ID# 615816

c: Requestor