



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Ms. Sylvia Hardman-Dingle  
General Counsel  
Office of General Counsel  
Texas Department of Assistive and Rehabilitative Services  
4800 North Lamar Boulevard, Suite 370, MC-1419  
Austin, Texas 78756

OR2015-26905

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# 592476 (PIA Request No. 2016 09/28-1 Carter).

The Texas Department of Assistive and Rehabilitative Services ("DARS") received a request for 1) information that would record the date of requests made by consumers for "emergency maintenance" during the last three fiscal years, 2) documents related to Vocational Rehabilitation Services for specified individuals during the last three fiscal years, 3) Individualized Plans for Employment for specified individuals receiving Vocational Rehabilitation Services during the last three fiscal years, and 4) information related to whether DARS provided a full range of services during a specified time frame. We understand you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup>

---

<sup>1</sup>We note DARS 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.

We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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 commissioner, 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.<sup>3</sup>

*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

---

<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.

<sup>3</sup>The 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.

advisory or other bodies that do not have official responsibilities for administration of the programs.

(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 submitted information consists of Individualized Plans for Employment and is personal information 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 she 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.

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 'Tamara R. Strain', with a long horizontal flourish extending to the right.

Tamara R. Strain  
Assistant Attorney General  
Open Records Division

TRS/sb

Ref: ID# 592476

Enc. Submitted documents

c: Requestor  
(w/o enclosures)