



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2016

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

OR2016-27045

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# 636800 (HHSC Ref. No. 11657).

The Texas Health and Human Services Commission (the "commission") received a request for a specified investigative file involving a named individual. You state 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. We have considered the exception you claim and reviewed the submitted information.

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, including section 531.1021 of the Government Code, which provides, in relevant part:

(g) All information and materials subpoenaed or compiled by the [commission's Office of the Inspector General ("OIG")] in connection with an audit or investigation or by the office of the attorney general in connection with a Medicaid fraud investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or the attorney general or their employees or agents involved in the audit or investigation conducted by the [OIG] or the attorney general, except

that this information may be disclosed to the state auditor's office, law enforcement agencies, and other entities as permitted by other law.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

Id. § 531.1021(g), (h). You state Exhibit B was compiled by the OIG in connection with an investigation concerning alleged Medicaid and other health and human services fraud and abuse. Based on your representation and our review, we find the commission must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code.

Section 552.101 of the Government Code also encompasses section 301.081 of the Labor Code. Section 301.081 governs the release of employment information held by the Texas Workforce Commission (the "TWC"). Section 301.081 provides in pertinent part as follows:

(a) Each employing unit shall keep employment records containing information as prescribed by the [TWC] and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the [TWC] or an authorized representative of the [TWC] at any reasonable time and as often as necessary.

(b) The [TWC] may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the [TWC] considers necessary for the proper administration of this title or as provided by [TWC] rule and consistent with federal law.

Labor Code § 301.081(a)-(c). You state Exhibit C consists of certain employment information provided to the commission by the TWC. Section 301.081(c) states employment information maintained by the TWC may be released to a public employee in the performance of public duties. *Id.* § 301.081(c). Accordingly, we conclude Exhibit C is confidential under section 301.081 of the Labor Code and must be withheld in conjunction with section 552.101 of the Government Code. *See* Open Records Decision No. 599 at 4 (1992) (concluding predecessor statute to section 301.081 made confidential total number of employees of employing unit provided to commission in quarterly unemployment tax reports).


In summary, the commission must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code. The commission must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code.

You ask this office to issue a previous determination permitting the commission to withhold OIG investigatory records under section 552.101 of the Government Code in conjunction with section 531.1021 (g) of the Government Code without seeking a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records or any other circumstances.

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

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 636800

Enc. Submitted documents

c: Requestor
(w/o enclosures)