



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 20, 2017

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

OR2017-01344

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# 642123 (Reference No. 11844).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified investigation. You state the commission will redact information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code.<sup>1</sup> Further, you state the commission will redact certain information pursuant to sections 552.130(c) and 552.147(b) of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Additionally, you state the release of the requested information may implicate the interests of the Texas Department of Family and Protective Services ("DFPS"). Accordingly, you state, and provide documentation showing, you notified DFPS of the request for information and of its right to submit comments to this office as to why the submitted information should not be released. *See Gov't Code*

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<sup>1</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See Gov't Code* § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

not be released). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 the submitted information was compiled by the OIG’s Internal Affairs Division in connection with an investigation concerning alleged fraud and abuse in the provision of health and human services. Based on your representation and our review, we find the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code.<sup>2</sup>

The commission asks 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

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records 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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 642123

Enc. Submitted documents

c: Requestor  
(w/o enclosures)