



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2017

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

OR2017-11989

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# 660042.

The Texas Health and Human Services Commission (the "commission") received a request for the video recording of a specified incident. The commission claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the commission claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note, and the commission acknowledges, the commission did not comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason 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 (Tex. App.—Austin 1990, no writ). The commission claims section 552.101 of the Government Code for the submitted information. Because

section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the commission's argument under this exception against release of 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, 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.

Hum. Res. Code § 12.003(a). 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. *Id.* § 11.001(1); *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." Open Records Decision No. 584 at 3 (1991). 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.*; Open Records Decision No. 166 (1977).

The commission asserts the submitted information relates to recipients of Medicaid and other benefits. The commission explains the video "contains images of individuals who have either obtained services or are applying for services." The commission informs us the release of the information in this instance would not be for purposes directly connected with the administration of an assistance program. Based on these representations and our review, we agree portions of the submitted information consist of information concerning persons applying for or receiving assistance for purposes of section 12.003 of the Human Resources

Code. In this instance, the commission states it does not possess the technological capability to redact information from video files. Thus, we agree the commission must withhold the entirety of the submitted video recording under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. *See* Open Records Decision No. 364 (1983).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 660042

Enc. Submitted documents

c: Requestor
(w/o enclosures)