



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

Mr. Carey E. Smith
Open Records Director
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2017-29125

Dear Mr. Smith:

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# 691447 (HHSC Ref. No. 13709).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to the requestor's "civil rights packet." The commission states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. Section 552.101 encompasses the Family and Medical Leave Act (the "FMLA"). *See* 29 U.S.C. §§ 2601 *et seq.* Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Section 825.500(g) states the following:

Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. . . . If the [Americans with Disabilities Act (the "ADA")], as amended, is also applicable, such

records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

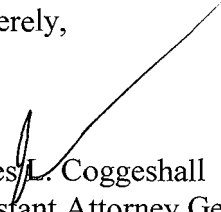
- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). The commission states the submitted information is subject to the FMLA. Upon review, we find the information at issue is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, the commission does not indicate the release provisions of the FMLA apply to this information. Accordingly, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with the FMLA.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 691447

Enc. Submitted documents

c: Requestor
(w/o enclosures)