January 24, 2019

Ms. Courtney L. Ebeier
Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

Dear Ms. Ebeier:

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# 747527 (HHSC Reference No. 16787).

The Texas Health and Human Services Commission (the “commission”) received a request for all reports pertaining to a specified location during a defined time period. You state you have released some of the requested information. 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 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 section 577.013(d) of the Health and Safety Code, which provides:

(d) All information and materials obtained or compiled by the [Texas Department of State Health Services (the “department”)] in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the department in the enforcement action against the licensed mental hospital;
(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital’s authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual identifying information and information identifying the licensed mental hospital has been deleted.

Health & Safety Code § 577.013(d). In addition, subsection (e) of section 577.013 provides that notice of the alleged violation against the licensed mental hospital, pleadings in the administrative hearing, and the final decision or order by the department are subject to disclosure under the Act.

We understand the submitted information was obtained or compiled by the department as a result of complaints or investigations concerning a mental health hospital licensed under chapter 577 that were made under section 577.013 of the Health and Safety Code. You inform us the program area that possessed the information at issue was formerly part of the department, but has been transferred to the commission. We have no indication the documents at issue contain any information that falls within the exceptions listed in subsections (d)(1) through (5) or (e)(1) through (3). Upon review, we find the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 577.013(d) of the Health and Safety Code.

Finally, you ask that this ruling serve as a previous determination that information and materials obtained or compiled by the commission as a result of a complaint and investigation concerning a mental health hospital are confidential in their entirety and may only be released to statutorily authorized persons. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request.

With regard to section 577.013(d), this previous determination allows the commission to withhold only information and materials obtained or compiled by the commission as a result of a complaint and investigation concerning a mental health hospital made under section 577.013 of the Health and Safety Code. See ORD 673 at 7. We note that you may only withhold this type of information when none of the release provisions of section 577.013(d) and (e) apply. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information. See id. at 7.
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/mo

Ref: ID# 747527

Enc. Submitted documents

c: Requestor
(w/o enclosures)