



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 12, 2019

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

OR2019-04079

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# 750099 (HHSC ORR #16486).

The Texas Health and Human Services Commission (the "commission") received a request for information and incident reports pertaining to mental health patients at state hospitals. 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 representative sample of information.<sup>1</sup>

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 section 299b-22 of title 42 of the United States Code, which provides, in part, as follows:

(a) Privilege

---

<sup>1</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c), patient safety work product shall be privileged and shall not be—

(3) subject to disclosure pursuant to section 552 of Title 5 (commonly known as the Freedom of Information Act) or any other similar Federal, State, or local law[.]

...

(c) Exceptions

Except as provided in subsection (g)(3)--

(1) Exceptions from privilege and confidentiality

Subsections (a) and (b) shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures:

(A) Disclosure of relevant patient safety work product for use in a criminal proceeding, but only after a court makes an in camera determination that such patient safety work product contains evidence of a criminal act and that such patient safety work product is material to the proceeding and not reasonably available from any other source.

(B) Disclosure of patient safety work product to the extent required to carry out subsection (f)(4)(A).

(C) Disclosure of identifiable patient safety work product if authorized by each provider identified in such work product.

...

(3) Exception from privilege

Subsection (a) shall not apply to (and shall not be construed to prohibit) voluntary disclosure of nonidentifiable patient safety work product.

42 U.S.C. § 299b-22(a)(3), (c)(1), (3). Section 299b-21(7) of title 42 of the United States Code defines “patient safety work product” as follows:

(A) In general

Except as provided in subparagraph (B), the term “patient safety work product” means any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements--

(i) which--

(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization[.]

...

(B) Clarification

(i) Information described in subparagraph (A) does not include a patient’s medical record, billing and discharge information, or any other original patient or provider record.

(ii) Information described in subparagraph (A) does not include information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system. Such separate information or a copy thereof reported to a patient safety organization shall not by reason of its reporting be considered patient safety work product.

42 U.S.C. § 299b-21(7)(A)(i)(I), (B)(i-ii); *see also id.* § 299b-21(4) (defining “patient safety organization”), (8)(A) (defining “provider” as an individual or entity licensed or otherwise authorized under state law to provide health care services). The commission explains, beginning in May 2018, providers began using The Safety Net (“TSN”), a secure web-based Health Insurance Portability and Accountability Act of 1996 compliant event reporting system, to report data pertaining to unusual incident events. The commission further explains TSN interfaces with patient safety organizations. The commission states the submitted information was assembled or developed by providers for reporting to a patient safety organization and was reported to a patient safety organization through TSN. The commission asserts the submitted information consists of patient safety work product that is privileged under section 299b-22(a). *See id.* § 299b-21(7). We understand none of the exceptions to confidentiality or privilege under section 299b-22(c) are applicable to the submitted information. Based on your representations and our review, we conclude the submitted information consists of patient safety work product that is privileged under section 299b-22(a). Therefore, the commission must withhold the submitted information under

section 552.101 of the Government Code in conjunction with section 299b-22(a) of title 42 of the United States Code.<sup>2</sup>

Finally, you ask this office to issue a previous determination permitting the commission to withhold information under section 552.101 of the Government Code in conjunction with section 299b-22 of title 42 of the United States Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Gov't Code § 552.301(a) (allowing a 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 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/mo

Ref: ID# 750099

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

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