



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-08521

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# 756913 (HHSC Reference No. 17340).

The Texas Health and Human Services Commission (the "commission") received a request for records pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 576.005 of the Health and Safety Code, which provides "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." Health & Safety Code § 576.005. You state the submitted information constitutes records of a mental health facility that would directly or indirectly identify a patient of the facility. *See id.* § 571.003(12), (16). Based upon these representations and our review, we find the confidentiality provision of section 576.005 applies to the information at issue. We

¹We note, and you acknowledge, the commission failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the commission's violation of section 552.301 in requesting this decision.

are unaware of any other state law that would permit disclosure of this information in this instance. Accordingly, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. *See* Open Records Decision No. 163 at 2-3 (1977) (statutory predecessor to Health and Safety Code § 576.005 made confidential detailed medical histories of residents, former residents, and deceased residents; correspondence to and from parents of residents; and notes of visits with parents; such information was thus excepted from disclosure under predecessor to Gov't Code § 552.101 as information deemed confidential by statute).

Finally, you ask this office to issue a previous determination that would permit the commission to withhold records of a mental health facility under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). 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, 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/mo

Ref: ID# 756913

Enc. Submitted documents

c: Requestor
(w/o enclosures)