



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

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

OR2019-10511

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# 760287 (Ref. No. 16998).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified investigation. You state the commission has released some information to the requestor. You claim some of 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 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,

¹We note the commission did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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.

You state some of the submitted information, which you have marked, was obtained or compiled by the department as a result of a complaint or investigation concerning a mental health hospital licensed under chapter 577 that was 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. You state none of the documents at issue contain information that falls within the exceptions listed in subsections (d)(1) through (5) or subsection (e). Upon review, we find the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 577.013(d) of the Health and Safety Code.²

Section 552.101 of the Government Code also encompasses information protected by federal law. The remaining information contains Centers for Medicare and Medicaid Services ("CMS") 2567 federal deficiency forms. Federal regulations require the release of completed CMS 2567 forms containing a statement of deficiencies and plan of correction, provided that

²We note, in Open Records Letter No. 2019-02164 (2019), we issued a previous determination authorizing the commission to withhold certain information under section 552.101 of the Government Code in conjunction with section 577.013(d) of the Health and Safety Code without the necessity of first requesting a ruling from this office for certain circumstances. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). We also note, although the requestor is a representative of the Texas Board of Nursing, she does not indicate she has a right of access to this information under state or federal law.

(1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 U.S.C. 1306(e), (f); 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 at 5 (1988); *see also* Health & Safety Code § 142.009(d)(6). Because the signature of the agency representative on the form indicates that the provider has had a reasonable opportunity to review the report and offer comments, the commission must withhold the information identifying individual patients, physicians, other medical practitioners, or other individuals, which you have marked, from the submitted CMS 2567 forms under section 552.101 in conjunction with federal law.

In summary, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 577.013(d) of the Health and Safety Code. The commission must withhold the information you have marked from the submitted CMS 2567 form under section 552.101 of the Government Code in conjunction with federal law. The commission must release the remaining information.

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,



Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 760287

Enc. Submitted documents

c: Requestor
(w/o enclosures)