



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 26, 2019

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

OR2019-17491

Dear Mr. Norbraten:

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# 772248 (Tracking No. OR-20180921-18212).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified ombudsman investigation. The commission claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the commission claims 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 information made confidential by other statutes. The commission claims section 552.101 in conjunction with section 101A.258 of the Human Resources Code for the submitted information. Section 101A.258 provides in relevant part:

- (a) The state long-term care ombudsman and representatives shall have access to patient care records of residents as provided by commission rules. Except as provided by Subsection (b), all records and information created or obtained by the state long-term care ombudsman or a representative remain confidential.

...

(b) The office [of the state long-term care ombudsman] shall ensure that the identity of a complainant or any resident may be disclosed only with the consent of the person or the person's legal representative or on court order.

(c) Files, records, and other information maintained as part of the ombudsman program may be disclosed only at the discretion of the state long-term care ombudsman.

Hum. Res. Code § 101A.258(a), (b)-(c). The commission states the submitted information pertains to an investigation conducted by the state's long-term care ombudsman pursuant to section 101A.257 of the Human Resources Code, which provides in relevant part:

(a) The office [of the state long-term care ombudsman] shall have access to residents [of a long-term care facility] and shall, in accordance with commission rules, investigate and resolve complaints made by or on behalf of residents.

*Id.* § 101A.257(a). The commission states the submitted information consists of work product resulting from an investigation conducted by the state's long-term care ombudsman on behalf of a resident pursuant to section 101A.257. The commission informs us the requestor is not the legal representative of the resident at issue. We understand the information at issue has not been ordered disclosed pursuant to a court order. We further understand the requestor is not the complainant in the investigation. Further, the commission states the resident objects to disclosure of the information at issue to the requestor. Thus, we conclude the requestor does not have a right of access to the information at issue under section 101A.258(b). *See id.* § 101A.258(b). The commission also informs us the state's long-term care ombudsman objects to disclosure of the records at issue, which are maintained as part of the ombudsman program. *See id.* § 101A.258(c). Based on these representations and our review of the information at issue, we find the submitted information is confidential pursuant to section 101A.258. Therefore, the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 101A.258(a) of the Human Resources Code.<sup>1</sup>

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.

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/be

Ref: ID# 772248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)