



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2020

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

OR2020-02860

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# 809130 (HHSC Ref. No. 20266).

The Texas Health and Human Services Commission (the "commission") received a request for information regarding a named deceased individual.¹ 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 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 a record 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

¹ You state the commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You also acknowledge, and we agree, the commission did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

information at issue. We 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, although you ask this office to issue a previous determination permitting the commission to withhold records of a mental health facility, we note that in Open Records Letter No. 2019-15662 (2019) this office already issued a previous determination authorizing 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. *See* Gov't Code § 552.301(a) (allowing 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).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 809130

Enc. Submitted documents

c: Requestor
(w/o enclosures)