



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 19, 2020

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

OR2020-05193

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# 812442 (HHSC Reference No. 19830).

The Texas Health and Human Services Commission (the "commission") received a request for certain information pertaining to child deaths at state psychiatric hospitals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from an attorney representing the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor seeks only certain information pertaining to child deaths at state psychiatric hospitals. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the commission is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

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<sup>1</sup> Regardless of whether the commission complied with section 552.301 of the Government Code, as 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* Gov't Code §§ 552.007, .302, .352.

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

(a) Privilege

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.

*Id.* § 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). Upon review, we find you have failed to demonstrate any of the responsive information is confidential under section 299b-22(a) of title 42 of the United States Code. Accordingly, the commission may not withhold the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 576.005 of the Health and Safety Code, which provides that “[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. Upon review, we find you have failed to demonstrate any of the responsive information consists of records of a mental health facility. Accordingly, the commission may not withhold the responsive information under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. The commission must release the submitted responsive 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 <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,



Nick Ybarra  
Assistant Attorney General  
Open Records Division

NY/rm

Ref: ID# 812442

Enc. Submitted documents

c: Requestor  
(w/o enclosures)