



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2020

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

OR2020-20579

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# 839858 (Ref. Nos. 22369, 22492).

The Texas Health and Human Services Commission (the "commission") received a request for the number of deaths in a specified type of facility during a specified time period. The commission received a second request for the number of COVID-19 cases and deaths in the specified type of facility. 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 representative sample of information.¹

Initially, we note in a letter dated August 3, 2020, the commission states it wishes to withdraw its request for an open records decision with regard to the information pertaining to COVID-19 cases and deaths because the commission has made the information at issue available.² Thus, this information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive 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." Gov't

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² A governmental body's officer for public information may comply with the requirement to promptly produce public information "by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public if the requested information is identifiable and readily available on that website." *See* Gov't Code § 552.221(b-1).

Code § 552.101. This section encompasses section 260A.016 of the Health and Safety Code. Section 260A.016 provides, in relevant part:

(b) An institution shall submit a report to the department concerning deaths of residents of the institution. . . .

(c) The institution must make the report on a form prescribed by the department.

. . .

(e) Except as provided by Subsection (f), a record under this section is confidential and not subject to the provisions of [the Act].

Health & Safety Code § 260A.016(b), (c), (e). Although you generally assert section 260A.016 makes the responsive information confidential, you have failed to demonstrate the responsive information consists of a report made under section 260A.016. *See also* 40 T.A.C. § 19.606(c) (providing that “reports” made to the commission pursuant to section 260A.016 are made confidential under that section). Accordingly, the commission may not withhold the responsive information under section 552.101 of the Government Code on this basis. The commission must release the 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 839858

Enc. Submitted documents

c: Requestor
(w/o enclosures)