



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 23, 2020

Mr. Anthony Paul  
Assistant District Attorney  
Denton County  
P.O. Box 2344  
Denton, Texas 76202

OR2020-26766

Dear Mr. Paul:

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# 847697 (Ref. No. 20-228).

Denton County Public Health ("DCPH") received a request for all raw data and reporting related to cases of a specified virus within DCPH's jail during a specified period of time. You claim the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

You assert the submitted information is not subject to the Act pursuant to section 552.002(d) of the Government Code. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business[.]" Gov't Code § 552.002(a)(1). However, "protected health information" as defined by section 181.006 of the Health and Safety Code is expressly excluded from the Act's definition of "public information." *See id.* § 552.002(d). Section 181.006 of the Health and Safety Code states:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

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<sup>1</sup> We assume 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.

(1) includes any information that reflects that an individual received health care from the covered entity[.]

Health & Safety Code § 181.006(1). Section 181.001(b)(2)(A) defines “covered entity,” in part, as any person who:

for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2)(A). You state DCPH provides health care to inmates. You explain DCPH is the treating health care facility and health care provider for county correctional institutions, such as the county jail. You further explain DCPH stores, maintains, and transmits public health information. Thus, you claim DCPH is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether DCPH is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether DCPH engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states, “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - (i) That identifies the individual; or
  - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

*Id.* Further, “health care” is defined as “care, services, or supplies related to the health of an individual.” *Id.* You inform us the submitted information consists of records provided to DCPH that contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations and are, thus, protected health information for purposes of section 181.006 of the Health and Safety Code. We find DCPH is a health care entity that is in the practice of collecting, using, and storing protected health information and, consequently, is a covered entity for purposes of section 181.006 of the Health and Safety Code. Upon review and pursuant to section 552.002(d) of the Government Code, we find some of the submitted information consists of protected health information not subject to the Act and DCPH need not release it in response to the present request for information.<sup>2</sup> However, we find DCPH has failed to demonstrate the remaining information consists of protected health information. Accordingly, we find the remaining information is subject to the Act, and DCPH must release it unless it falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302.

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.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 81.046 of the Health and Safety Code, which provides, in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (c-1), (d), and (f).

Health & Safety Code § 81.046(a)-(b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies. *See id.* § 81.046(b)-(d), (f); ORD 577. You state the remaining information relates to cases or suspected cases of diseases or health conditions furnished to DCPH and section 81.046 governs the release of the information at issue. Based on your representations and our review, we agree section 81.046 governs the release of the remaining information. Additionally, we understand none of the release provisions of section 81.046 are applicable in this instance. Accordingly, we determine

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<sup>2</sup> As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

DCPH must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.<sup>3</sup>

In summary, pursuant to section 552.002(d) of the Government Code, some of the submitted information consists of protected health information not subject to the Act and DCPH need not release it in response to the present request for information. DCPH must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety 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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/gw

Ref: ID# 847697

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.