



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2022

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

OR2022-12953

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# 946065 [Ref. No. A02022022.0450009].

The Texas Department of State Health Services (the "department") received a request for the vaccination records of a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

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 section 161.007 of the Health and Safety Code, which provides in relevant part:

¹ We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception the department claims can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

² 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 those records contain substantially different types of information than that submitted to this office.

(a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code[.]

...

(j) Except as provided by Sections 161.00705, 161.00706, 161.00735(b), and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual's legally authorized representative.

Health & Safety Code § 161.007(a)(1), (j). You state the department established an immunization registry, ImmTrac, that functions as the state's immunization registry. You further explain the department promulgated rules pursuant to section 161.007(a)(1) to protect the confidentiality of patient information found in ImmTrac. Section 100.2 of title 25 of the Texas Administrative Code, as adopted by the department pursuant to section 161.007(a)(1), provides in part:

Except as provided by Texas Health and Safety Code, Chapter 161, Subchapter A, §161.00705, information that identifies an individual, and is received by the department for the immunization registry, is confidential and may be used by the department for registry purposes only. Unless specifically authorized by Texas Health and Safety Code, Chapter 161, Subchapter A, the department may not release immunization registry information to any person or entity without the electronic or written consent of the individual or the individual's legally authorized representative.

25 T.A.C § 100.2; *see also id.* §§ 100.1, .3-.7. Upon review, we find the information at issue was obtained by the department for the immunization registry. Further, there is no indication the individual's legally authorized representative has provided written consent to release registry information to this requestor. Accordingly, the submitted information is confidential under section 161.007(j) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code on that basis.³

You ask this office to issue a previous determination that would permit the commission to withhold information subject to section 161.0073 (a) of the Health and Safety Code without requesting a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental

³ As our ruling is dispositive, we need not address your remaining argument against disclosure.

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). We decline to issue such a previous determination at this time. Accordingly, 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/jm

Ref: ID# 946065

Enc. Submitted documents

c: Requestor
(w/o enclosures)