



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2022

Ms. Kendra Thomas, JD, LPC
General Counsel
The Harris Center for Mental Health and IDD
9401 Southwest Freeway
Houston, Texas 77074

OR2022-21812

Dear Ms. Thomas:

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# 960009.

The Harris Center for Mental Health and IDD (the "center") received a request for specified types of information related to calls received from a specified hotline. You state you have released some information to the requestor. You state the center does not have information responsive to portions of the request.¹ You claim a portion of the submitted information is not subject to the Act. Alternatively, you claim a portion of 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.²

You assert the information you have marked 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,

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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.

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). 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:

(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:

[F]or 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 the center is a behavioral health provider providing behavioral health care services to the residents of Harris County. You assert the information collected, used, and stored by the center consists of protected health information. Thus, you claim the center is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether the center is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether the center 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 [HIPAA].” *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.* The submitted information consists of the center’s records that contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the information at issue consists of protected health information for purposes of section 181.006 of the Health and Safety Code. Therefore, with respect to this information, the center 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. Accordingly, pursuant to section 552.002(d) of the Government Code, we find the information you have marked consists of “protected health information” not subject to the Act and the center need not release it in response to the present request for information.³ As you make no further arguments against disclosure, the center must release the remaining 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 960009

c: Requestor

³ As we are able to make this determination, we need not address your remaining argument against disclosure of this information.