



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 1, 2022

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

OR2022-33931

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# 981181 (HHSC Ref. No. A08232022.045001).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified complaint. You state you will withhold some of the requested information pursuant to Open Records Letter No. 2022-06591 (2022).<sup>1</sup> 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 information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses sections 401.126 and 401.133 of title 42 of the Code of Federal Regulations. You state the information at issue consists of a CMS-2567 federal deficiency form. The commission claims this information is confidential under sections 401.126 and 401.133. These federal regulations require the commission to release the CMS-2567 form provided that (1) no information identifying individual patients, physicians, other practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity

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<sup>1</sup> Open Records Letter No. 2022-06591 authorizes the commission to withhold information and materials obtained or compiled by the commission as a result of a complaint and investigation concerning a hospital under section 552.101 of the Government Code in conjunction with section 241.051(d) of the Health and Safety Code without requesting a decision from this office.

to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988). The CMS-2567 form does not contain the signature of the hospital's representative or any comments provided by the hospital. The commission does not inform us that the commission sent this form to the hospital for review and comments, that the investigated hospital has had a reasonable opportunity to review this federal report, or any evidence that the federal and state conditions that would authorize the commission to publicly release this form have been met. Thus, we conclude the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with sections 401.126 and 401.133 of title 42 of the Code of Federal Regulations. *See* 42 C.F.R. §§ 401.126, .133.

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/eb

Ref: ID# 981181

Enc. Submitted documents

c: Requestor  
(w/o enclosures)