



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2005

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2005-05411

Dear Mr. Connelly:

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# 226389.

The Texas Department of State Health Services (the "department") received a request for information related to a specified complaint regarding Memorial Hermann Fort Bend Hospital. You state that you have released some information but claim that 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.

In this instance, the submitted information is subject to a previous determination issued by this office. In Open Records Letter No. 2005-04917 (2005), we held that, without the necessity of requesting a ruling from this office, the department may withhold information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital made under section 241.051 of the Health and Safety Code when none of the release provisions of section 241.051(d) and (e) apply. In that previous determination, we further held that the department, without requesting a ruling from this office, may withhold the identifying information of patients, physicians, other medical practitioners, or other individuals contained in a federal CMS Form 2567 Statement of Deficiencies and Plan of Correction prior to its release when the provider whose form is being evaluated has had a reasonable opportunity to review the report and offer comments. See Open Records Letter No. 2005-04917 (2005).

In this instance, you indicate some of the information at issue was obtained or compiled by the department in connection with a complaint and investigation concerning Memorial Hermann Fort Bend Hospital made under section 241.051 of the Health and Safety Code and none of the release provisions of section 241.051(d) and (e) apply. You further indicate the information at issue includes identifying information of patients, physicians, other medical practitioners, or other individuals contained in a federal CMS Form 2567 Statement of Deficiencies and Plan of Correction concerning Memorial Hermann Fort Bend Hospital and that the hospital has had a reasonably opportunity to review the report and offer comments. Accordingly, the department must withhold the submitted complaint and investigation information, as well as the identifying information in the submitted CMS Form 2567, from disclosure pursuant to the previous determination in Open Records Letter No. 2005-04917. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 226389

Enc. Submitted documents

c: Mr. Joe Silhavy
2210 Keeran Point Court
Sugar Land, Texas 77478
(w/o enclosures)