



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 13, 2007

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

Mr. Edward M. Sosa  
Chief Legal Officer  
El Paso County Hospital District  
4815 Alameda, 8th Floor, Suite B  
El Paso, Texas 79905

OR2007-14861

Dear Mr. Sosa:

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# 294549.

The R.E. Thomason General Hospital, which is owned and operated by the El Paso County Hospital District (the "district") received a request "the name, address, past due amount, patient account information, and length past due for medical accounts 3 months or more past due" for the previous three years. You claim that the requested 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.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note, and you acknowledge, that the district has not complied with the time period prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. When a governmental body fails to comply with the procedural

---

<sup>1</sup>We assume that 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.

requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information that other statutes make confidential. You claim that the submitted information is not subject to release pursuant to the Privacy Rule adopted by the United States Department of Health and Human Services, Office for Civil Rights, to implement the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act. *See* Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We therefore held that disclosures under the Act come within section 164.512(a) of title 45 of the Code of Federal Regulations. Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, No. 03-04-00743-CV, 2006 WL 2504417 (Tex. App.—Austin, August 30, 2006, no. pet.) (disclosures under the Act fall within section 164.512(a)(1) of the Privacy Rule); Open Records Decision No. 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the district may

withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

You also claim that the submitted information is confidential under section 241.152 of the Health and Safety Code, which states in relevant part:

(a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." Health & Safety Code § 241.151(2). In this instance, you do not explain how the information at issue relates to the history, diagnosis, treatment, or prognosis of a patient. Thus, we find you have failed to establish that the submitted information is confidential under section 241.152 of the Health and Safety Code. Accordingly, the submitted information may not be withheld under section 552.101 on this basis.

Next, you raise section 552.101 in conjunction with common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

In this instance, you seek to withhold names, addresses, and account balances of patients' that are past due on their accounts. Having considered your arguments, we find that the information in question is not protected by the common-law right to privacy. *Cf.* Gov't

Code § 552.022(a)(3) (providing for required public disclosure of information in account, voucher, or contract relating to governmental body's receipt or expenditure of public or other funds); Open Records Decision No. 385 at 2 (1983) (statutory predecessor to Gov't Code § 552.022(a)(3) evidenced policy of full disclosure of public body's debtors and creditors; thus, names of public hospital's debtors, amounts they owed, and dates on which their accounts became delinquent were not protected by privacy). We therefore conclude that the district may not withhold any of the information in question on privacy grounds under section 552.101 of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.

Finally, you ask this office to issue a previous determination that would permit the district to withhold information relating to patient names, addresses, and account balances without the necessity of again requesting an attorney general decision under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to do so at this time.

Accordingly, 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); *Texas 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 Office of the Attorney General 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. 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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 294549

Enc. Submitted documents

c: Mr. Matt Watson  
Richard T. Marshall & Associates  
423 Executive Center Boulevard  
El Paso, Texas 79902-1003  
(w/o enclosures)

Filed In The District Court  
of Travis County, Texas

SC MAR 14 2016  
At 8:30 A.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-07-004064

EL PASO COUNTY HOSPITAL  
DISTRICT, D/B/A R.E. THOMASON  
GENERAL HOSPITAL,  
*Plaintiff,*

v.

GREG ABBOTT, ATTORNEY  
GENERAL OF THE STATE OF  
TEXAS,  
*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

126th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

**AGREED ORDER OF DISMISSAL**

This cause is an action under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff El Paso County Hospital District and Defendant Ken Paxton, Attorney General of Texas,<sup>1</sup> agree that this matter should be dismissed pursuant to PIA section 552.327 on the grounds that the requestor had abandoned his request for information. See Tex. Gov't Code § 552.327. A court may dismiss a PIA suit under section 552.327 when all parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request for information in writing or has abandoned the request. *Id.* The Attorney General represents to the Court that the requestor, Mr. Matt Watson, has abandoned his request for information. Accordingly, the District is not required to disclose the requested information subject to release in Letter Ruling OR2007-14861. The parties agree to the entry of this Agreed Order of Dismissal.

<sup>1</sup> Ken Paxton is now the proper defendant in the lawsuit because he holds the office of Attorney General of Texas.



The Court is of the opinion that entry of an agreed dismissal order is appropriate.

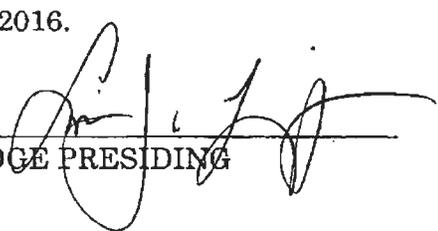
It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is DISMISSED in all respects;

All court costs and attorney fees are taxed to the party incurring same;

All other requested relief not expressly granted herein is denied;

This order disposes of all claims between the parties and is final judgment.

Signed this 14<sup>th</sup> day of March, 2016.

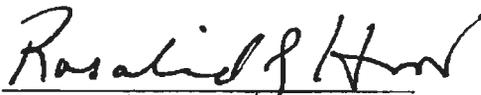
  
\_\_\_\_\_  
JUDGE PRESIDING

AGREED:



MANUEL ROMERO  
State Bar No. 24041817  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901  
Telephone: (915) 546-2083  
Facsimile: (915) 546-2133  
Manuel.Romero@epcounty.com

ATTORNEY FOR PLAINTIFF  
EL PASO COUNTY HOSPITAL DISTRICT



ROSALIND L. HUNT  
State Bar No. 24067108  
Assistant Attorney General  
Administrative Law Division  
Office of the Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4166  
Facsimile: (512) 457-4677  
Rosalind.Hunt@texasattorneygeneral.gov

ATTORNEYS FOR DEFENDANT  
ATTORNEY GENERAL OF TEXAS