



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2009

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-09145

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# 347924 (DSHS File No. O15206-2009).

The Texas Department of State Health Services (the "department") received a request for information relating to four specified Planned Parenthood facilities. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We also understand you to claim section 552.137 for portions of the submitted information. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245.011(d) provides the following:

Except as provided by Section 245.023, all information and records held by the department under [chapter 245 of the Health and Safety Code] are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

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Assistant General Counsel
Texas Department of State Health Services
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The Texas Department of State Health Services (the "department") received a request for information relating to four specified Planned Parenthood facilities. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We also understand you to claim section 552.137 for portions of the submitted information. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245.011(d) provides the following:

Except as provided by Section 245.023, all information and records held by the department under [chapter 245 of the Health and Safety Code] are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

Health & Safety Code § 245.011(d). In addition, section 245.023(e) of the Health and Safety Code “does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.” *Id.* § 245.023(e).

You indicate that the department holds the information at issue under chapter 245 of the Health and Safety Code. You state that none of the exceptions to confidentiality under section 245.011(d) are applicable to the information you have marked. Having considered your arguments, we conclude that the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code.

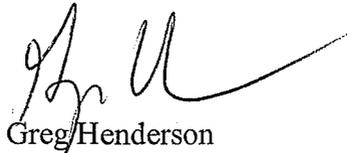
Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The remaining information contains e-mail addresses that are not types specifically excluded by section 552.137. Accordingly, the department must withhold the e-mail addresses you have marked under section 552.137 in the remaining information, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with section 245.011 of the Health & Safety Code. The department must also withhold the e-mail addresses you have marked in the remaining information under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining submitted information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#347924

Enc. Submitted documents

c: Requestor
(w/o enclosures)