



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2009

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

OR2009-12047

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# 354281.

The Texas Department of State Health Services (the "department") received a request for annual reports for dialysis facilities in the state of Texas and the state outcomes lists for 2002 through 2008. 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.

Initially, we note that the requestor asked for information from 2002 to 2008. The submitted information, however, covers only the years 2006 to 2008. To the extent that reports and lists for the years 2002 to 2005 exist, we assume you have released them. If not, the department must release such information immediately. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting if governmental body concludes no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).*

Next, you acknowledge the department failed to comply with the procedural requirements mandated by section 552.301 when requesting this ruling. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd.*

of Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Because the application of section 552.101 can provide a compelling reason for non-disclosure under section 552.302, we will consider your claim under this exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You inform us that the outcomes lists are statistically compiled rank-orderings of Medicare-certified end-stage renal disease facilities in each state. You state the lists are used solely by the state to determine which facilities should be inspected or surveyed by the state agency. You further state the surveys are mandated by section 1881 of the Social Security Act. While you generally assert the outcomes lists are confidential by law, you have not directed our attention to any confidentiality provision, nor are we aware of any, that would make the outcomes lists confidential under section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the department may not withhold any portion of the outcomes lists under section 552.101 of the Government Code. As you raise no other exception to disclosure, the department must release the outcomes lists in their entirety.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 354281

Enc. Submitted documents

c: Requestor
(w/o enclosures)