



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Ms. Dawn Burton
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-14036

Dear Ms. Burton:

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# 357416.

The Texas Department of State Health Services (the "department") received a request for all information pertaining to the inspection of a specified abortion facility from 1998. You state you have released some information to the requestor. You 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.

Initially, you acknowledge that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). The information at issue is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.101 of the Government Code can

provide a compelling reason to withhold information, we will address your argument against disclosure of this 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.

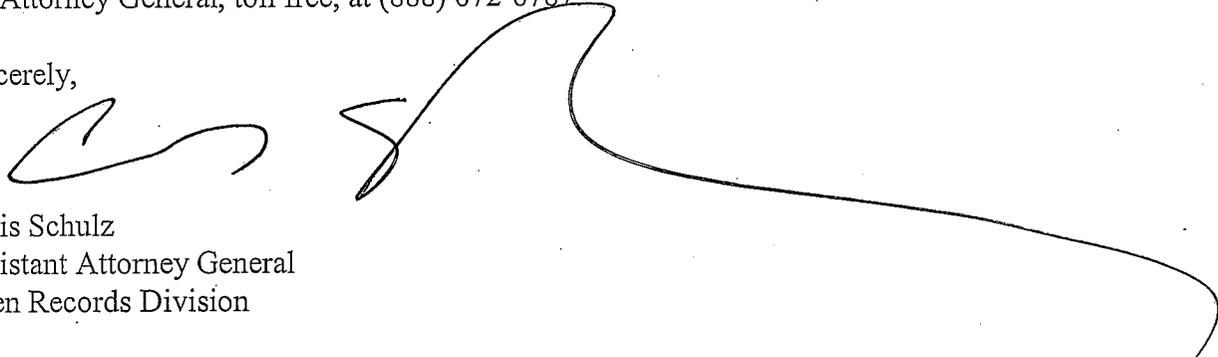
Health & Safety Code § 245.011(d). In addition, section 245.023(e) of the Health and Safety Code "does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility." *Id.* § 245.023(e). You indicate that the department holds the information at issue under chapter 245 of the Health and Safety Code. We note that none of the exceptions to confidentiality under section 245.011(d) are applicable to the information. Having considered your arguments, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code.

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, toll free, at (888) 672-6787

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 357416

Enc. Submitted documents

cc: Requestor
(w/o enclosures)