



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

Ms. Lisa Hernandez
General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-17378

Dear Ms. Hernandez:

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# 363834 (DSHS File No. O16524-2010).

The Department of State Health Services (the "department") received a request for all information pertaining to five specified Planned Parenthood facilities from January 1, 2009 to the date of the request and information pertaining to the assessment of penalties. You state the department has released or will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor has specifically excluded any identifying information about clients or staff at the specified facilities from her request. Thus, any such information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released. As such, we need

¹Although you also raise section 552.111 of the Government Code as an exception to disclosure, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, the department has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general).

²We assume 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.

not address your argument under section 552.101 of the Government Code in conjunction with section 245.023(e) of the Health and Safety Code. *See* Health & Safety Code § 245.023(e) (providing the department is not authorized to release 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).

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). Section 245.023 of the Health and Safety Code provides in relevant part:

(a) The department on request shall make the following information available to the public:

- (1) the status of the license of any abortion facility;
- (2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is

acceptable to the department and that is being undertaken by the facility with respect to the violation; and

(3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

Id. § 245.023(a). You indicate the department holds the information you have marked under chapter 245 of the Health and Safety Code. We note the submitted information contains administrative and civil penalties imposed against the Planned Parenthood facilities at issue and documents from Planned Parenthood raising a challenge to the allegation that there was a violation. These documents are subject to sections 245.023(a)(2) and (3). You state the department has released all information subject to section 245.023(a). You indicate none of the remaining information at issue is subject to disclosure under section 245.023(a) of the Health and Safety Code. Having considered your arguments, we conclude the remaining information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 245.011(d) of the Health and Safety Code.³

Section 552.101 of the Government Code also encompasses section 531.1021 of the Government Code, which provides in relevant part as follows:

(g) All information and materials subpoenaed or compiled by the [Office of the Inspector General of the Health and Human Services Commission (the "office")⁴] in connection with an audit or investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office [of inspector general] or its employees or agents involved in the audit or investigation conducted by the office, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is consistent with the authorized purpose for which the person first received the information.

³As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

⁴We note the Health and Human Services Commission directly oversees the department.

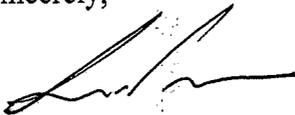
Gov't Code § 531.1021(g), (h). You assert the remaining information was "gathered and/or created as a result" of an investigation conducted by the office. Upon review, we agree the remaining information the department has marked is confidential under section 531.1021(g) and must be withheld under section 552.101 of the Government Code.⁵

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 245.011(d) of the Health and Safety Code, except for the information that is subject to section 245.023(a)(2) and (3) of the Health and Safety Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 363834

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.