



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2011

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

ATTORNEY GENERAL OF TEXAS

OR2011-03262

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# 410867 (DSHS File 018341-2011).

The Texas Department of State Health Services (the "department") received a request for the latest department inspection of two named abortion clinics. You state the department does not have any information pertaining to one of the named clinics. You also state the department has released some of the requested information to the requestor. You claim portions of the submitted information are 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 comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b), (e). A governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision

No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address 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. 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.

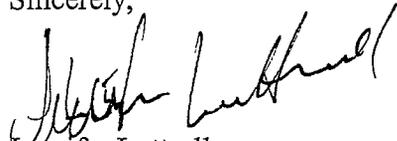
Health & Safety Code § 245.011(d). In addition, section 245.023(e) of the Health and Safety Code "does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility." *Id.* § 245.023(e). 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 you have marked. Having considered your arguments, we conclude that the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code. The remaining 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 410867

Enc. Submitted documents

c: Requestor
(w/o enclosures)