



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2012

Mr. Thomas D. McClure
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 14347
Austin, Texas 78714-9347

OR2012-03543

Dear Mr. McClure:

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# 447381 (DSHS File No. 19785).

The Texas Department of State Health Services (the "department") received a request for any reports made to the department's medical director about complaints against a named doctor for a specified time period and any reports made to the Travis County District Attorney pertaining to certain complaints against the named doctor. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered the exceptions you claim.

Initially, we note some of the requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2012-01807 (2012) and 2012-01819 (2012). In those decisions, we ruled that certain information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the department may rely on Open Records Letter Nos. 2012-01807 and 2012-01819 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not

changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the department did not comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). You inform us that the department received the present request on December 20, 2011. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

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 the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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); *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 at 2 (1977). You assert that the remaining requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived the discretionary exceptions you claim. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the remaining requested information may not be withheld under any of the discretionary exceptions. Furthermore, because you have failed to submit any information for our review, we have no basis for finding any of the remaining requested information confidential under the claimed mandatory exceptions. Thus, we have no choice but to order you to release any requested information that was not the subject of Open Records Letter Nos. 2012-01807 and 2012-01819 pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 447381

cc: Requestor

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