



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2013

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

OR2013-04804

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# 483130 (DSHS File 020944/2012).

The Texas Department of State Health Services (the "department") received a request for the most current health reports for five specified "abortion facilities." You claim some of 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 inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-03610 (2013). In the previous ruling, we concluded that the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code and must release the remaining information to the requestor. As you do not indicate there has been any change in the law, facts, and circumstances on which the previous ruling is based, we conclude the department must withhold or release the information at issue, which we have marked, in accordance with Open Records Letter No. 2013-03610.¹ See Open Records Decision

¹ Although you initially raised section 552.101 of the Government Code for additional portions of this information, you informed us in a letter dated March 20, 2013, that the department withdraws its argument for this information.

No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we note, and you acknowledge, the department failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the remaining information. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to the remaining information.

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 the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245.011(d) provides:

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 [the Act]. 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 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.

...

(e) This section 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(a), (e). You state some of the remaining submitted information, which pertains to an abortion facility, is governed by chapter 245 of the Health and Safety Code. You assert the current request does not fall within the four types of disclosure permitted under section 245.011(d) and the information is not subject to section 245.023(a). Accordingly, the department must withhold the information at issue, which we have marked, under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code.²

In summary, the department must withhold or release the information we have marked in accordance with Open Records Letter No. 2013-03610. The department must withhold the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code. As you raise no further exceptions to disclosure, the department must release the remaining information.

²Although you initially raised section 552.101 of the Government Code for additional portions of the remaining information, you informed us in a letter dated March 20, 2013, that the department withdraws its argument for this information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 483130

Enc. Submitted documents

c: Requestor
(w/o enclosures)