



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2014

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

OR2014-04644

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# 517314 (DSHS OR File No. 22489/2013).

The Texas Department of State Health Services (the "department") received a request for information related to specified surveys conducted by the department.<sup>1</sup> 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.

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, such as chapter 251 of the Health and Safety Code, which relates to end stage renal disease facilities. Section 251.015 provides:

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<sup>1</sup>We note the department failed to comply with the procedural requirements of section 552.301(b) of the Government Code by failing to meet its ten-business-day deadline. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for attorney general's decision and to state exceptions that apply within ten business days of receiving written request). Nonetheless, section 552.101 is a mandatory exception that constitutes a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the department's assertion of section 251.015 of the Health and Safety Code under section 552.101 of the Government Code.

(a) A medical review board shall advise the [Texas Board of Health] on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Health & Safety Code § 251.015. Section 251.061 of the Health and Safety Code provides, in relevant part:

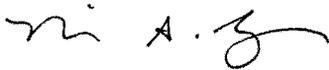
(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under [the Act], in accordance with that chapter or other applicable law.

*Id.* § 251.061(g). You assert the information you have marked in Exhibit B1 is confidential pursuant to section 251.015(c) of the Health and Safety Code. You represent this information consists of quality of care information compiled by the department. We note the information at issue contains corrective action plans, which, pursuant to section 251.061(g), are not confidential. However, you assert the information you marked in the corrective action plans also constitutes confidential quality of care information subject to section 251.015(c). Based on your representations and our review of the information at issue, we find the information you have marked, as well as the additional information we have marked, is confidential under section 251.015(c) of the Health and Safety Code. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 251.015(c) of the Health and Safety Code. As you raise no other exceptions to disclosure, the remaining information must be released.

You ask this office to issue a previous determination permitting the department to withhold information under section 552.101 of the Government Code in conjunction with section 251.015(c) of the Health and Safety Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 517314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)