



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 3, 1998

Ms. Linda Wiegman
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1837

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117071.

The Texas Department of Health (the "department") received a request for information concerning the department's response to Petroplex Gynecological Clinic's application for a license under section 245.005 of the Health & Safety Code. You claim that the requested information, except for the facility's license status, is exempted from required public disclosure by section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 exempts from disclosure information considered to be confidential by law, including statutory law. Abortion facilities are licensed pursuant to chapter 245 of the Health and Safety Code. Section 245.011(d) makes all information and records held by the department under chapter 245 confidential and not subject to the Open Records Act except under certain enumerated circumstances, which we find are not applicable here, and except as provided by section 245.017. The Seventy-fifth Legislature amended chapter 245 of the Health and Safety Code by adding section 245.017, which provides in pertinent 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.

(b) Subsection (a) does not require the department to provide information that is not in the possession of the department. The Texas State Board of Medical Examiners shall provide to the department information in the possession of the board that the department is required to provide under Subsection (a).

....

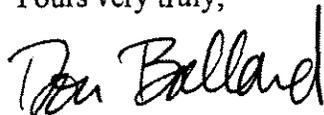
(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Health & Safety Code § 245.017 (added by Act of May 26, 1997, 75th Leg., R.S., ch. 1120, § 4, 1997 Tex. Gen. Laws 4264, 4265.)

The requested information may only be released as provided by sections 245.011(d)(1) - (4) and 245.017(a) of the Health & Safety Code. You indicate that the facility's license status will be released. After reviewing the submitted materials, we conclude that the department must withhold the remaining requested information under section 552.101 of the Government Code in conjunction with section 245.011(d) of the Health and Safety Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117071

Enclosures: Submitted documents

cc: Mr. Allen E. Parker, Jr.
Ms. Kathleen Cassidy Goodman
Mr. R. Clayton Trotter
Ms. Anna Mary Torres
Texas Justice Foundation
8122 Datapoint, Suite 812
San Antonio, Texas 78229
(w/o enclosures)