



May 17, 1999

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-1354

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# 125182.

The Department of Health (the "department") received a request for correspondence with specified individuals and organizations regarding proposed regulations for abortion facilities. You seek to withhold a portion of the requested information under section 552.101 of the Government Code in conjunction with section 245.011(d) of the Health and Safety Code.

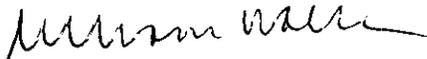
We note first that your request for this office's decision was untimely. The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Although you did not seek the decision of this office within ten business days of receiving the request for information, you claim that the information at issue is made confidential by law. Therefore, we will consider your claim for withholding the information.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. Section 245.011(d) of the Health & Safety Code provides, with exceptions which do not appear to be applicable here, that "all information and records held by the department under [chapter 245] are confidential and are not open records for purposes of [the Public Information Act]." *See also* Health & Safety Code § 245.011 (certain license status, inspection, and penalty information regarding abortion facilities is public). You advise that the information at issue was gathered by the department under chapter 245. Based on your representations, we conclude that the information is made confidential by section 552.101 of the Government Code in conjunction with section 245.011(d) of the Health & Safety Code and must therefore be withheld.

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.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/eaf

Ref.: 125182

encl: Submitted documents

cc: Ms. Karen Olsson  
The Texas Observer  
307 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)