



June 6, 2001

Mr. George D. Cato
Deputy General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-2353

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148084.

The Department of Health (the “department”) received a written request from a Board of Nurse Examiners investigator for a copy of the department’s report from an investigation of Charlton Methodist Hospital in Dallas, Texas. You state that the department has released some responsive information to the requestor. You contend, however, that other requested information is confidential under section 241.051 of the Health and Safety Code, and therefore must be withheld pursuant to section 552.101 of the Government Code.

Initially, we must address the fact that you did not comply fully with section 552.301 of the Government Code in requesting this ruling. Section 552.301 prescribes the procedures that a governmental body must follow in seeking a ruling as to whether requested information is excepted from disclosure. Section 552.301(b) provides that “[t]he governmental body must ask for the attorney general’s decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request.” Gov’t Code § 552.301(b). Section 552.302 provides as follows:

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is

presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302. You state that the department received the current request on March 8, 2001. You did not request a decision from this office until April 2, 2001. We therefore conclude that you failed to request this letter ruling in timely compliance with section 552.301(b). Accordingly, the information at issue is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of that information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ). A claim that the requested information is confidential under section 552.101 of the Government Code in conjunction with some other source of law can furnish a compelling reason sufficient to overcome the operation of section 552.302. *See* Gov't Code § 552.101; Open Records Decision Nos. 630 at 3 (1994) (addressing compelling reasons sufficient to overcome non-compliance with section 552.301), 325 (1982) (citing statutory predecessor to section 552.101).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 241.051 of the Health and Safety Code provides in pertinent part:

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with the department in the enforcement action against the hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

- (1) a notice of alleged violation against the hospital, which notice shall include the provisions of law which the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;
- (2) the pleadings in the administrative proceeding; and
- (3) a final decision or order by the department.

You state that the submitted information was created by the department in the course of an investigation made in response to a complaint concerning a hospital. We agree that this information is subject to section 241.051 of the Health and Safety Code. Under subsection (d) of this statute, such information is not subject to the disclosure requirements of the Public Information Act. This section also generally forbids the release of this information; however, it provides exceptions to this prohibition. In pertinent part, it provides that the information "may be disclosed to . . . appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services." Health & Safety Code § 241.051(d)(3).

In this case, the request was made by the Board of Nurse Examiners (the "board"). The board is authorized to investigate complaints against nurses under section 301.457 of the Occupations Code. Here, the board is investigating a complaint of nurse conduct that is apparently also the subject of the department's hospital investigation. We consider the board's investigation of this complaint to be an authorized investigation into hospital services as contemplated by section 241.051(d)(3) of the Health and Safety Code. The department therefore is permitted to release this information to the board.

It is well settled state policy that state agencies should cooperate with one another in the interest of efficient and economical administration of their statutory duties. *See* Open Records Decision Nos. 655 (1997), 516 (1989). This office recognizes that a release to a state agency is not a release to the public for purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or section 552.352 of the Government Code, which provides criminal penalties for the release of information considered to be confidential under the Public Information Act. *Id.* We also note that section 301.466 of the Occupations Code affords confidentiality to information "compiled by the board in connection with the complaint and investigation" in language substantially similar to that afforded the department's investigation information by section 241.051(d) of the Health and Safety Code.

We conclude that release of the hospital investigation materials is subject to section 241.051(d) of the Health and Safety Code, rather than to the Public Information Act,

and that the department is permitted, but not required, to release the requested information to this requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "J. Steven Bohl". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/seg

Ref: ID# 148084

Encl. Submitted documents

cc: Ms. Kathy Metzger
Board of Nurse Examiners
P.O. Box 430
Austin, Texas 78767-0430
(w/o enclosures)