



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2004

Mr. Marc Allen Connelly
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2004-0449

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# 194797.

The Department of Health (the "department") received a request for a copy of a specific complaint. You claim that the requested 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

You assert that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 241.051 of the Health and Safety Code.¹ Section 241.051 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

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

confidential and not subject to disclosure under [the Public Information Act], 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 [the Public Information Act]:

- (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.

Health & Safety Code § 241.051(d), (e). You indicate that the department obtained and compiled the submitted information as a result of a complaint concerning a general hospital. *See* Health & Safety Code § 241.003(5) (defining general hospital). You state that this information does not contain any information that falls within the exceptions to confidentiality outlined in section 241.051. Based on your arguments and our review of the submitted information, we agree that this information is subject to section 241.051 and that none of the exceptions outlined in that section is applicable in this instance. Accordingly, we conclude that the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 241.051 of the Health and Safety Code.

In her letter to this office, the requestor attempts to waive the confidentiality provision of section 241.051 of the Health and Safety Code in order that she might be given access to the requested information. We note that section 241.051 constitutes other law that is not solely intended to protect the privacy interests of the requestor. *Cf.* Gov't Code § 552.023(b) (providing that governmental body may assert as grounds for denial of access to confidential information other law that is not intended to protect the person's privacy interests); *see also* Open Records Decision No. 481 (1987). Therefore, section 552.023 does not grant the requestor a special right of access to the information at issue in her request.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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).

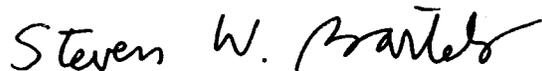
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194797

Enc. Submitted documents

c: Ms. Beverly Hanna
P.O. Box 6567
Tyler, Texas 75711
(w/o enclosures)