ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2004

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

OR2004-6879

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207693.

The Texas Department of Health (the "department") received a request for all records regarding a named individual. 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.

Initially, you acknowledge that the department has not sought an open records decision from this office within ten business days as prescribed by section 552.301. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Thus, we will address your argument under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses

information protected by section 241.051 of the Health and Safety Code, which 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 [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 also state that none of this information falls within the exceptions to confidentiality outlined in section 241.051. Based on your arguments and our review, we agree that the submitted information is subject to section 241.051 and that none of the exceptions outlined in that section are 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.

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 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 10 calendar days of the date of this ruling.

Sincerely,

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/jev

Ref: ID# 207693

Enc: Submitted documents

c: Ms. Shari Porter
Certified Records, Inc.
1926 Silver St., Suite 225
Garland, Texas 75042
(w/o enclosures)