



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2005

Mr. Marc Allen Connelly  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2005-05583

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# 226674.

The Texas Department of State Health Services (the "department") received a request for information related to a particular hospital and the "Hospital Licensing Standards-1988 Edition." 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.<sup>1</sup>

You indicate, and the documents reflect, that the present request concerns information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital made under section 241.051 of the Health and Safety Code. We note that this type of information is the subject of a previous determination issued to the department under section 552.301 of the Government Code. *See Gov't Code § 552.301(a).*

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<sup>1</sup> To the extent any additional types of responsive information existed on the date the department received this request, we assume the department has released them. If the department has not released any such records, it must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

In Open Records Letter No. 2005-4917 (2005), issued June 6, 2005, we granted the department a previous determination finding that information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital made under section 241.051 of the Health and Safety Code are excepted from disclosure under section 552.101 in conjunction with section 241.051. Additionally, with regard to CMS form 2567, the previous determination allows the department to withhold the identifying information of patients, physicians, other medical practitioners, or other individuals contained in the form when the provider whose form is being evaluated has had a reasonable opportunity to review the report and offer comments. *See* 42 U.S.C. § 1306(e), (f); 42 C.F.R. §§ 401.126, .133. That previous determination authorizes the department to withhold such information without the necessity of requesting a decision from the attorney general, provided the pertinent facts and circumstances have not changed since the issuance of the prior ruling. In this case, you do not inform us of any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude that the department must withhold the submitted information marked under section 241.051, as well as information identifying individual patients, physicians, other medical practitioners, or other individuals from the CMS forms 2567, in accordance with the previous determination issued in Open Records Letter No. 2005-4917. *See also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 226674

Enc. Submitted documents

c: Mr. Robert Young  
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(w/o enclosures)