



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2007

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

OR2007-04279

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# 276985.

The Texas Department of State Health Services (the "department") received a request for information regarding data on the termination of pregnancies in Texas by county of occurrence for years 2004 and 2005. You claim that the submitted 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245:011(d) provides the following:

Except as provided by Section 245.023, all information and records held by the department under [chapter 245 of the Health and Safety Code] are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;

- (2) with the consent of each person, patient, and abortion facility identified in the information released;
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or
- (4) to appropriate state licensing boards to enforce state licensing laws.

Health & Safety Code § 245.011(d). Section 245.023 of the Health and Safety Code provides for release of three categories of information concerning an abortion facility.

You indicate that the department holds the information at issue under chapter 245 of the Health and Safety Code. Initially, we note that the submitted information consists purely of statistical information that is not subject to section 245.023(a). From our review, this statistical information does not identify any persons, patients, or facilities pursuant to section 245.011(d). Further, although the department claims that the information is identifying, you have not adequately explained how the submitted information could be identifying. Thus, the department has the discretion to release the submitted information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code. *See* Attorney General Opinion JM-1144 (1990) (statistical reports may be released at the discretion of the department).

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 Office of the Attorney General 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/jb

Ref: ID# 276985

Enc. Submitted documents

c: Ms. Mia Zolna  
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(w/o enclosures)