



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2009

Mr. Marc Allen Connelly  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2009-07889

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# 346057 (DSHS File No. O14910-2009).

The Department of State Health Services (the "department") received a request for the state survey of a specified facility occurring at a specified time. You state some information will be released to the requestor. You claim portions of the submitted information are 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 received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Section 552.101 encompasses chapter 251 of the Health and Safety Code, which relates to end stage renal disease facilities. Section 251.015 provides as follows:

- (a) A medical review board shall advise the department on minimum standards and rules to be adopted under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning the quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Health & Safety Code § 251.015. You have marked the information you assert is subject to section 251.015.<sup>1</sup> You inform this office that the submitted documents contain information pertaining to the quality of care by an end stage renal disease facility. You also indicate that these documents were provided to or compiled by the department or a medical review board. Based on your representations and our review of the information at issue, we agree that the information you have marked is confidential under section 251.015(c) of the Health and Safety Code. Therefore, this information must be withheld from disclosure under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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

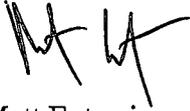
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>1</sup>You also assert that the "plan of correction" information located in the right column of the submitted documents is subject to section 251.015; however, we note the right column does not contain information in this instance.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Entsminger', written in a cursive style.

Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 346057

Enc. Submitted documents

c: Requestor  
(w/o enclosures)