



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2009

Ms. Dawn Burton
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-11727

Dear Ms. Burton:

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# 352845.

The Texas Department of State Health Services (the "department") received two requests for re-certification and licensing surveys for a specified facility conducted during specified time periods. You state that the department has made or will make some of the requested information available to the requestors. You claim that 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.

Initially, we note, and you acknowledge, that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). Although you state that one of the requestors and the department agreed to extend the deadline for response, we note that the deadlines contained in section 552.301 of the Government Code are fixed by statute and cannot be altered by agreement. *See* Open Records Decision Nos. 541 at 3 (1990), 514 at 1-2 (1988), Attorney General Opinion JM-672 (1987). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. *See id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information 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). Because section 552.101 can provide a compelling reason to withhold information, we will consider whether any of the submitted information must be withheld under that exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Chapter 251 of the Health and Safety Code relates to end stage renal disease facilities. Section 552.101 encompasses section 251.015 of the Health and Safety Code, which 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 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. Section 251.061 of the Health and Safety Code provides in part:

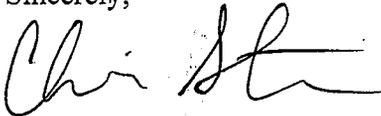
(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

Id. § 251.061(g). You have marked the information you assert is subject to section 251.015. You state that the submitted documents contain “information concerning quality of care by an end stage renal disease facility[.]” You further state that these documents were “provided to or compiled by the department or a medical review board[.]” Although you acknowledge that generally, corrective action plans are not confidential pursuant to section 251.061(g), you assert the corrective action plans you have highlighted are confidential under other law. Specifically, you explain that the corrective action plans you have marked also constitute confidential quality of care information subject to section 251.015(c). 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.¹ As you raise no further exceptions to disclosure, the remaining information must be released to the requestors.

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, or call the Office of the Attorney General’s Open Government Hotline, toll free, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/egg

¹As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

Ref: ID# 352845

Enc. Submitted documents

c: Requestor (2)
(w/o enclosures)