



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Ms. Connie Crawford
Assistant County Attorney
El Paso County Hospital District Legal Department
4815 Alameda Avenue
8th Floor, Suite B
El Paso, Texas 79905

OR2010-05196

Dear Ms. Crawford:

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# 375563.

The El Paso County Hospital District (the "district") received a request for a specific district hospital's policies, procedures, regulations, and rules that have been in effect during a specified period and which reference or set forth any policy regarding the acceptance or refusal of Medicare or Medicaid benefits on behalf of individuals injured either by automobile accident or by negligent third parties. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Under section 552.022(a)(14), "administrative staff manuals and instructions to staff that affect a member of the public" are expressly public unless they are expressly confidential under "other law." Gov't Code § 552.022(a)(14). The submitted information consists of pages from a manual regarding Medicare billing and reimbursement, a district memorandum containing specific directions on Medicare billing and reimbursement, and pages from a manual describing the process of submitting an informational claim. Upon review, we conclude these documents are administrative staff manuals and instructions to staff that affect the public, and are, therefore, subject to section 552.022(a)(14). You claim this information is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception that protects a governmental body's

interests and is, therefore, not "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold this information under section 552.103 of the Government Code.

However, some of the submitted documents are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, as you raise no further exceptions to disclosure, the district must release the submitted information to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 375563

Enc. Submitted documents

cc: Requestor
(w/o enclosures)