



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2010

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

OR2010-07210

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# 379929 (DSHS OR File O17026-2010).

The Texas Department of State Health Services (the "department") received a request for the Induced Abortion Report Form (the "form") for the Planned Parenthood Clinic (the "clinic") in Bryan pertaining to abortions performed on two specified dates. You state that some responsive information has been provided to the requestor pursuant to section 245.023(a) of the Health and Safety Code. 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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). In addition, section 245.023(e) of the Health and Safety Code “does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.”¹ *Id.* § 245.023(e). You indicate that the department holds the information at issue under chapter 245 of the Health and Safety Code.

Section 245.011(d)(2) provides for the release of records held by the department under chapter 245 of the Health and Safety Code if each person, patient, and abortion facility identified in the information has consented. The submitted information does not identify any person or patient. Further, although the department claims that the information is identifying, you have not adequately explained how the submitted information could be identifying. You have provided this office with a copy of a letter from the clinic authorizing review of the form at issue by the requestor. Upon review, we find that the release provision in section 245.011(d)(2) is applicable to the submitted information. Thus, the department has the discretion to release the submitted information in this instance pursuant to section 245.011(d)(2) of the Health and Safety Code. Otherwise, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code.

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

¹We note that the information at issue does not contain the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 379929

Enc. Submitted documents

c: Requestor
(w/o enclosures)