



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2011

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

OR2011-01893

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# 407190.

The Texas Department of State Health Services (the "department") received a request for four categories of information related to a specified Notice of Violation dated July 27, 2010 and the Amended Notice of Violation dated September 14, 2010. 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 have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's comments. We understand the requestor, as a representative of the facility that was the subject of the investigation, to assert a right of access to the submitted information under section 577.013(d)(2) of the Health and Safety Code. *See* Health & Safety Code § 577.013(d)(2); *see also* 25 T.A.C. § 134.81(f)(2)(B). Pursuant to section 552.303 of the Government Code, we requested additional information from you as to whether the information at issue pertains to an investigation conducted

pursuant to chapter 577 of the Health and Safety Code.¹ You inform our office that the information at issue is related to an investigation conducted under chapter 577 of the Health and Safety Code.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 577.013 of the Health and Safety Code, which, in relevant part, provides:

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with the department in the enforcement action against the licensed mental hospital;
- (2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

Health & Safety Code § 577.013(d). As previously noted, you state the submitted information is related to an investigation conducted under chapter 577 of the Health and Safety Code. Accordingly, the submitted information is subject to section 577.013(d) because it consists of information and materials compiled by the department as a result of

¹See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

complaints and investigations concerning a mental hospital. However, you inform our office that, as the representative for the facility that was the subject of the investigation, the requestor would be authorized to receive the information at issue under section 577.013(d)(2), "if litigation were not pending or reasonably anticipated at the time of the request." Although you seek to withhold the submitted information under section 552.103 of the Government Code, we note exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the submitted information must be released to this requestor under section 577.013(d)(2) of the Health and Safety Code.³

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 407190

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.