



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2012

Mr. Monty Waters
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2012-19687

Dear Mr. Waters:

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# 472943(DSHS File No. 20843/2012).

The Texas Department of State Health Services (the "department") received a request for information pertaining to hospitals or facilities required to report health care-associated infections to the department, as well as information pertaining to reporting rules for health care-associated infections. You state the department has released or will release some of the requested information. You claim some of 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 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. This section encompasses information protected by other statutes, such as section 98.109 of the Health and Safety Code, which provides in part:

(a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

Health & Safety Code § 98.109(a). You state the submitted information was compiled by the department under chapter 98 of the Health and Safety Code and, thus, must be withheld pursuant to section 98.109 of the Health and Safety Code. We understand the statutory exceptions to confidentiality do not apply in this instance. We note, however, that sections 98.103 and 98.1045 of the Health and Safety Code require health care facilities to report only certain health care-associated infections and health care-associated preventable adverse effects involving a facility's patients, to the department. *See id.* §§ 98.103, .1045. In this instance, the submitted information consists of the contact information for facilities required to report health care-associated infections to the department, which is administrative information, rather than patient information or information relating to the incidence of infections or preventable adverse effects. Accordingly, we find the submitted information is not confidential under section 98.109 of the Health and Safety Code and may not be withheld under section 552.101 of the Government Code on that basis.

We note the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). This exception is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail addresses we have marked do not appear to be of a type specifically excluded by subsection (c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure.²

¹The 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).*

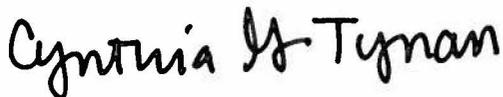
²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

In summary, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to disclosure. The department must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 472943

Enc. Submitted documents

c: Requestor
(w/o enclosures)