ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2013

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

OR2013-10165

Dear Mr. Richards:

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# 490712 (DSHS File 21470-2013).

The Texas Department of State Health Services (the "department") received a request for all abortion complication reports made to the department since December 31, 2012. You claim 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 the Texas Abortion Facility Reporting and Licensing Act, chapter 245 of the Health and Safety Code. Section 245.011(d) provides:

> 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 [the Act]. 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). Section 245.023 of the Health and Safety Code provides in part:

> (a) The department on request shall make the following information available to the public:
>
> > (1) the status of the license of any abortion facility;
> >
> > (2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and
> >
> > (3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.
>
> . . .
>
> (e) This section 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.

*Id.* § 245.023(a), (e). You indicate the department holds the submitted information, which pertains to abortion facilities, under chapter 245 of the Health and Safety Code. We note the current request does not fall within the four types of disclosure permitted under

section 245.011(d) and the information at issue is not subject to section 245.023(a). Accordingly, 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.[1]

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 490712

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[1]As our ruling is dispositive, we need not address your remaining argument against disclsoure.