



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2016

Mr. Mack T. Harrison
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street, M-525
Austin, Texas 78756-3199

OR2016-21519

Dear Mr. Harrison:

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# 627500 (File# 26230).

The Texas Department of State Health Services (the "department") received a request for the expert reports from a specified proceeding in which the Texas Midwifery Board is a party. You claim the submitted information is excepted from disclosure under sections 552.101 through 552.156 of the Government Code. We have considered the exceptions you claim.

We must address the department's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). As of the date of this letter, you have not submitted comments regarding the stated exceptions or a copy or representative sample of the requested information required by section 552.301(e). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is

public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As you have failed to submit the requested information to this office for our review, the department has waived any discretionary exceptions that may apply. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Additionally, as you have not submitted the requested information for our review, we cannot find any of the information confidential by law. Therefore, we have no choice but to order the department to release the responsive information in accordance with section 552.302 of the Government Code. If the department believes the information is confidential and may not lawfully be released, the department must challenge this ruling in court pursuant to 552.324 of the Government 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.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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 627500

c: Requestor