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ATTORNEY GENERAL OF TEXAS

June 13, 2017

Mr. Robert L. Spurk
Counsel for the North Texas Medical Center
Reed, Claymon, Meeker & Hargett, PLLC
5608 Parkcrest Drive, Suite 200
Austin, Texas 78731

OR2017-12972

Dear Mr. Spurk:

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# 661462.

The Gainesville Hospital District d/b/a North Texas Medical Center (the "NTMC"), which you represent, received a request for three categories of information, including a specified letter. The NTMC states it has released some of the requested information. The NTMC claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the NTMC claims and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note, and the NTMC acknowledges, the NTMC did not comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See Gov't Code* § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos.* 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The NTMC claims section 552.101 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the NTMC's argument under this exception against release of 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, including section 1306(e) and (f) of title 42 of the United States Code, which provides:

(e) Public inspection

Notwithstanding any other provision of this section the Secretary [of Health and Human Services] shall make available to each State agency operating a program under subchapter XIX of this chapter and shall, subject to the limitations contained in subsection (f) of this section, make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX of this chapter—

- (1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;
- (2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and
- (3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) of this section shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being

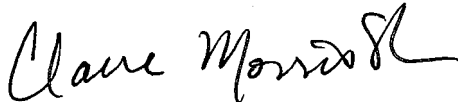
evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

42 U.S.C. § 1306(e)-(f). The NTMC argues the submitted information is confidential under section 1306(e) of chapter 42 of the United States Code. Upon review, we find the submitted documents do not consist of any of the types of information that are made confidential by section 1306. Further, NTMC has not demonstrated it is an entity to which section 1306 applies. Accordingly, the NTMC may not withhold any portion of the submitted information under section 552.101 of the Government Code on that basis. Thus, the NTMC must release the submitted 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.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 661462

c: Requestor