



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2019

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-02326

Dear Mr. Miles:

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# 747633 (HHSC Reference No. 16918).

The Texas Health and Human Services Commission (the "commission") received a request for twelve categories of information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ Additionally, you state the release of the requested information may implicate the interests of the Texas Department of Family and Protective Services ("DFPS"). Accordingly, you state, and provide documentation demonstrating, the commission notified DFPS of its right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments regarding why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, including

¹We note the commission failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the commission's violation of section 552.301 in requesting this decision.

chapter 241 of the Health and Safety Code, which governs the licensing of hospitals. Section 241.051 authorizes the commission to make any inspection, survey, or investigation that it considers necessary, and provides in pertinent part:

(d) All information and materials obtained or compiled by the [Department of State Health Services (the “department”)²] in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under [the Act], 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 hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital’s authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

- (1) a notice of alleged violation against the hospital, which notice shall include the provisions of law which the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;
- (2) the pleadings in the administrative proceeding; and
- (3) a final decision or order by the department.

Health & Safety Code § 241.051(d), (e). You state the commission obtained and compiled the submitted information in connection with an investigation of a complaint concerning a hospital. You also state none of the exceptions to confidentiality found in sections

²We note the Eighty-Fourth Legislature passed Senate Bill 200, which as of September 1, 2017, transferred the licensing and regulation of hospitals from the department to the commission.

241.051(d) or (e) apply to the information at issue. Based on your representations and our review, we conclude the submitted information is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 241.051(d) of the Health and Safety 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 747633

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)