



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2019

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

OR2019-28570

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# 790572 (OR-19008).

The Health and Human Services Commission (the "commission") received a request for information pertaining to a specified complaint and investigation.¹ You state the commission has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the submitted information may implicate the interests of the Centers for Medicare & Medicaid Services ("CMS"). Accordingly, you state you notified CMS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.304 (providing that interested party may submit written comments

¹ The commission states it received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² As of the date of this letter, this office has not received comments from CMS explaining why any of the submitted information should not be released.

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.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, including 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”)]³ in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, 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;

³ We 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.

- (2) the pleadings in the administrative proceeding; and
- (3) a final decision or order by the department.

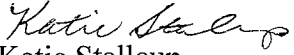
Health & Safety Code § 241.051(d), (e). You state the commission obtained and compiled the information at issue in connection with an investigation of a specified hospital. You also state none of the exceptions to confidentiality found in sections 241.051(d) or (e) apply to the information at issue. Based on your representations and our review, we conclude the information at issue is confidential under section 241.051(d). Accordingly, the commission must withhold the information it indicated under section 552.101 of the Government Code in conjunction with section 241.051(d) of the Health and Safety Code.

In summary, the commission must withhold the information it indicated under section 552.101 of the Government Code in conjunction with section 241.051(d) of the Health and Safety Code. The commission 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,


Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 790572

Enc. Submitted documents

c: Requestor
(w/o enclosures)