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ATTORNEY GENERAL OF TEXAS

January 14, 2020

Ms. Courtney Ebeier
Attorney
Texas Health & Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-01342

Dear Ms. Ebeier:

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# 806047 (HHSC OR# 20191017-20140).

The Texas Health & Human Services Commission (the "commission") received a request for a specified complaint file. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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

¹ We note the commission may have 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, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will address the applicability of this exception to the submitted information. *See id.* § 552.007, .302.

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.

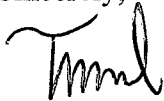
Id. § 245.023(a). You state the submitted information, which pertains to an abortion facility, is governed by chapter 245 of the Health and Safety Code. You assert the current request does not fall within the four types of disclosure permitted under section 245.011(d). You also state the information at issue is not subject to section 254.023(a). Accordingly, the commission 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.²

² As our ruling is dispositive, we need not address your remaining argument against disclosure.

Finally, you request that this office issue a “previous determination” that would permit the commission to withhold such information pertaining to abortion facilities under section 552.101 of the Government Code in conjunction with section 245.011 of the Health and Safety Code without the need of requesting a ruling from us about whether such information can be withheld from disclosure. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 806047

Enc. Submitted documents

c: Requestor
(w/o enclosures)