



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 20, 2020

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

OR2020-05363

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# 812849 (OR# 20585).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to an inspection of a specified entity. You state you released some information. 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 representative sample of information.²

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:

¹ We note the commission did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

² We 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.

(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 [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 [the Act]:

- (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 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 submitted information under section 552.101 of the Government Code in conjunction with section 241.051(d) of the Health and Safety Code.

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.

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,

A handwritten signature in black ink, appearing to read "Meagan Hunter". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/be

Ref: ID# 812849

Enc. Submitted documents

c: Requestor
(w/o enclosures)