



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 11, 1996

Honorable Mike Driscoll  
County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

Letter Opinion No. 96-0001

Re: Whether a hospital district may charge retrieval and copying fees for health care information in accordance with the new section 241.154(b) of the Health and Safety Code when those fees exceed the charges established by the General Services Commission pursuant to section 552.262 of the Government Code (ID# 38086, formerly ID# 35941)

Dear Mr. Driscoll:

You have requested an opinion from this office regarding the charges a county hospital district may assess for the retrieval and copying of hospital records, and whether a statutory conflict exists between section 241.154(b) of the Health and Safety Code and section 552.262(a) of the Government Code.<sup>1</sup>

The Seventy-fourth Legislature enacted a provision addressing the charges that a governmental body may assess for copies of public information. This new provision addressing charges provides in part the following, "[t]he rules adopted by the General Services Commission shall be used by each governmental body in determining charges for copies of public information, *except to the extent that other law provides for charges for specific kinds of public information.*" Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 17, 1995 Tex. Sess. Law Serv. 5127, 5136 (to be codified at Gov't Code § 552.262(a), effective September 1, 1995) (hereinafter "section 552.262(a)") (emphasis added).

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<sup>1</sup>In your letter to this office, you state that hospital records "are confidential pursuant to the Texas Medical Practice Act, TEX. REV. CIV. STAT. ANN. art. 4495b, § 5.08, the release of these records is governed by the Open Records Act, because they are maintained, as required by law, by a governmental body." Initially, we note that the disclosure of hospital records was recently addressed by the Seventy-fourth Legislature. See Act of May 29, 1995, 74th Leg., R.S., ch. 856, §§ 1, 11, 1995 Tex. Sess. Law Serv. 4290, 4291-93, 4297. Secondly, we note that the Texas Medical Practice Act governs the release of medical records rather than chapter 552 of the Government Code. See Open Records Decision No. 598 (1991).

The Seventy-fourth Legislature also enacted a provision that appears to specifically address the charges a hospital may assess for copying health care information. The provision addressing hospitals and health care information provides the following:

The hospital may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$30; and

(A) a charge for each page of:

(i) \$1 for the 11th through the 60th page of the provided copies;

(ii) 50 cents for the 61st through the 400th page of the provided copies; and

(iii) 25 cents for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on microfiche, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$45; and

(A) \$1 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

Act of May 29, 1995, 74th Leg., R.S., ch. 856, § 1, 1995 Tex. Sess. Law Serv. 4290, 4292 (to be codified at Health & Safety Code § 241.154(b)) (hereinafter "section 241.154(b)").<sup>2</sup>

The general cost provisions in section 552.262 apply to any request for information received by a governmental body. However, when another statute sets a fee for providing copies of specific types of public information, the specific statutory

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<sup>2</sup>Section 241.154(b) applies to the disclosure of health care information on or after January 1, 1996. Act of May 29, 1995, 74th Leg., R.S., ch. 856, § 11, 1995 Tex. Sess. Law Serv. 4290, 4297.

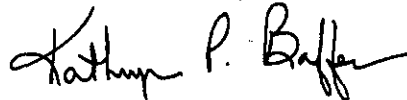
provision prevails over the general cost provisions of chapter 552 of the Government Code.<sup>3</sup> We additionally note that the Code Construction Act provides that when interpreting an irreconcilable conflict between general and specific statutes, "the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail." Gov't Code § 311.026(b); *see also* Attorney General Opinion JM-1137 (1990) (specific provision prevails over general).

The two statutory provisions at issue may be harmonized. Section 552.262(a) acknowledges that other statutory provisions may exist that would allow for different copying charges for some types of information. Section 241.154(b) is one of these special types of statutes outlining different charges for copying information. Section 241.154(b) of the Health and Safety Code therefore prevails over the general cost provisions of chapter 552 of the Government Code. Thus, the hospital district may charge fees for copying health care information in its possession in accordance with section 241.154(b) of the Health and Safety Code.

### SUMMARY

A hospital district may assess fees for the retrieval and copying of health care information in accordance with Texas Health and Safety Code section 241.154(b), Act of May 29, 1995, 74th Leg., R.S., ch. 856, § 1, 1995 Tex. Sess. Law Serv. 4290, 4292, even when those fees exceed the charges established by the General Services Commission pursuant to section 552.262(a) of the Government Code, Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 17, 1995 Tex. Sess. Law Serv. 5127, 5136.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>See Attorney General Opinions MW-163 (1980) (statutory provision specifically addresses charges assessed by Secretary of State for copies prevails over general provision of statutory predecessor to Gov't Code ch. 552); H-560 (1975) (statutory predecessor to Gov't Code ch. 552 general cost provision addressing assessment of costs did not repeal specific statute addressing assessment of costs by General Land Office for copying records); Attorney General Letter Opinion No. 94-010 (1994) (county treasurer may assess fees for copying information in accordance with statutory provision specifically addressing these types of charges rather than general cost provision under Gov't Code ch. 552).