



FAQs on Open Records Request for Hospital-Specific COVID-Reporting Data

The Texas Hospital Association offers answers to member hospitals' questions about the [notice](#) many hospitals received from the Texas Department of State Health Services on Dec. 14. The notice is related to a Texas Public Information Act, also known as the Texas Open Records Act, request DSHS received for data hospitals report to the state on PPE and staffing availability.

1. **Why did I receive the notice from DSHS?**

Under [section 552.305](#) of the [Texas Public Information Act](#), a government agency that receives a request for information it received from a third-party is generally required to notify that third-party of the request if it believes the third-party's privacy or proprietary interests are involved. You received the notice because information reported by your hospital to DSHS is responsive to the request and DSHS may be required by law to provide that information and data to the requestor. Over 470 hospitals were notified by DSHS of the request.

2. **Who made the request to the State?**

The Texas Tribune (the "requestor") filed two requests with DSHS on Nov. 30 under the Texas Public Information Act, found at Texas Government Code Chapter 552. See the [request for hospital personal protective equipment data](#) and the [request for hospital critical staffing shortage data](#) for more.

3. **What is being requested?**

The requestor is requesting information reported to the State by hospitals related to the availability of PPE and staffing. Specifically, the Tribune is requesting:

- (1) Raw data — in a machine-readable database or spreadsheet format such as Excel, CSV, Access, SQL or XML — **pertaining to PPE supplies** collected by DSHS from each hospital as part of the COVID-19 Hospital Data Points from the earliest date available through the latest date available; and
- (2) Raw data — in a machine-readable database or spreadsheet format such as Excel, CSV, Access, SQL or XML — **pertaining to critical staffing shortages** collected by DSHS from each hospital as part of the COVID-19 Hospital Data Points from the earliest date available through the latest date available.

Each request further specifies specific data elements being requested.

4. **Will the information and data reported by my hospital be given to the requestor?**

Unless objections are filed by your hospital with the Texas Attorney General, it appears DSHS intends to release information reported by your hospital that includes the data elements set forth in [this spreadsheet](#) prepared by DSHS.

5. What will the requestor do with the information it receives from DSHS?

The requestor did not specify in its request what it will do with the information it receives, and DSHS is prohibited by law from asking the requestor about its intentions with respect to the information.

6. Can I prevent DSHS from turning over my information and data to the requestor?

You can try. If you believe there are grounds to object to the release of information and data reported by your hospital to DSHS, you may file objections with the Texas Attorney General at:

Office of the Attorney General
Open Records Division
P. O. Box 12548
Austin, TX 78711-2548

The procedure for objecting is set forth in [section 552.305](#) of the PIA. Note also that you are required to provide the requestor with a copy of your communication to the Office of the Attorney General.

7. What are the grounds for objecting to the request that I might assert?

Any objection to DSHS producing the information for your hospital must be supported by a specific exception found in the PIA.

The most applicable section of the PIA appears to be [section 552.110](#), related to “Confidentiality of Trade Secrets” and “Confidentiality of Commercial or Financial Information.” Under that section, information is excepted from disclosure under subsection (b) “if it is demonstrated based on specific factual evidence that the information is a trade secret.” Additionally, under subsection (c), “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained” is excepted from disclosure.”

[Section 552.101](#) may also provide an avenue for objecting. Under that section, information is excepted from disclosure “if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Some have suggested that [section 81.046](#) of the [Texas Communicable Disease Prevention and Control Act](#) that makes communicable disease reporting confidential arguably applies to the data submitted by Texas hospitals. Specifically, while the data submitted is not information about a specific case of COVID-19, the information collected by DSHS may be information that generally “relate[s] to cases or suspected cases of diseases or health conditions” under the language found in section 81.046(b).

8. What is the deadline for filing objections with the Attorney General?

A hospital must submit its objections “within a reasonable time not later than the 10th business day after the date the person receives the notice.” “Business days” is not defined, and therefore it is not clear

whether state holidays (Dec. 24 and Dec. 25) are counted in the 10 business days. Therefore, if you received the notice on Dec. 14, we advise that a hospital submit any objections not later than Dec. 28 to ensure that it is timely filed.

9. Will THA be filing objections to the request?

No, THA does not have standing under the PIA to assert objections on behalf of its members. Further, as noted above, section 552.110 requires “specific factual evidence” supporting the objections, which THA is not able to produce for any specific hospital or system.

10. Am I required to do anything?

No, the notice you received was merely to provide you with the opportunity to object to DSHS releasing your information if you choose to do so. You are not required to take any action. DSHS, as the government agency in possession of the information, is required to respond and provide the requested information if no objections are filed.

Contact a member of THA’s advocacy & legal teams for additional information:

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