



Texas Health Care
Information Council

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AUG 30 2001
OPEN RECORDS DIVISION

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August 30, 2001

The Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

REQUEST FOR OPINION

Dear General Cornyn:

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AUG 31 2001 FILE # ML-4213001
OPINION COMMITTEE I.D. # 42130 RECEIVED
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RQ-0425-80
OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION
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As Executive Director of the Texas Health Care Information Council (THCIC) and on behalf of the THCIC, I am requesting an Attorney General's opinion on various issues surrounding the THCIC's authority to charge for data it has collected and compiled under Chapter 108 of the Texas Health and Safety Code. The 74th Legislature created the THCIC in 1995. The agency is charged by statute to collect inpatient discharge data from Texas hospitals for the purpose of making the data available to the public. Health & Safety Code § 108.006(6), (9). Section 108.012(b) authorizes the THCIC to set its own fees for copies of THCIC data:

Section 108.012(b) reads:

The council may charge a person requesting public use or provider quality data a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the council in collecting and providing the data and shall be set at a level that will raise revenue sufficient for the operation of the council.

However, section 108.0045 makes the THCIC subject to the Public Information Act (PIA), Tex. Govt Code, Ch. 552. The PIA requires state agencies to follow the General Services Commission (GSC) rules on charges for public information.

Specifically, section 552.262(a) of the PIA states:

The General Services Commission shall adopt rules for use by each governmental body in determining charges for providing copies of public information under this subchapter and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection as authorized by Sections 552.271(c) and (d). The rules adopted by the General Services Commission shall be used by each governmental body in determining charges for providing copies of public information and in determining the charge, deposit, or bond required for making public information that exists in a paper record available for inspection, **except to the extent that other law provides for charges for specific kinds of public information.** (emphasis added).

Thus, it seems to us that subsection (a) of section 552.262 of the PIA recognizes the grant of authority to the THCIC to charge according to § 108.012(b).

The THCIC has created the Public Use Data File (PUDF), containing over 100 data elements, such as hospital name, patient gender, type of admission, source of payment, principal and other diagnoses, procedures, length of stay, risk of mortality score, severity of illness score, accommodation charges, and ancillary charges. It is in an electronic format and by THCIC rule, 25 TAC §1301.18, is made available for inspection by the public. A copy may be obtained for a fee of \$1000 per calendar quarter.

The amount of this fee was determined by the THCIC Executive Director following guidelines set by the THCIC Board after consideration of the charges levied in other states for data that is approximately comparable. The Executive Director set the fee after determining that if the fee were set at a level to "raise revenue sufficient for the operation of the council" [as specified in Chapter 108.012(b)], the sales price would be prohibitive and the expected level of revenues generated would decline. Such a price also seemed to conflict with the PIA and the Health & Safety Code § 108.006(6), (9)'s express purpose of making this information available to the public.

1. The THCIC requests an opinion on whether you concur with our interpretation that section 108.012(b) prevails over the charges for public information established in the PIA and General Services Commission rules, 1 TAC §§111.61-.70, and thus, section 108.012(b) authorizes the THCIC to set its own fees for information developed by it.
2. The THCIC also requests an opinion on whether the THCIC can charge the current fee of \$1000 per calendar quarter, which was not entirely derived from a cost-basis calculation. Alternatively, must the agency literally comply with the dictates of section 108.012(b), even if charges based on recovery of operational expenses would be at an increased charge over and above the \$1000 now being charged, and certainly more than the charge based on GSC cost rules?
3. Similarly, if a person requests a paper or electronic copy of the PUDF that requires a customized presentation of the data, would the THCIC be required to follow the PIA and GSC rules to determine charges for copies and processing fees for this information, or may the THCIC set its own fees in accordance with section 108.012(b)?
4. Assuming the THCIC has authority to adopt its own charges pursuant to section 108.012(b), may the THCIC charge the same fee to each subsequent requester of the same item once a custom report is created particularly for one person? Or once the agency has recovered its initial costs for the report, must it only charge for the cost of copying and accessing the report for a subsequent requester?
5. Lastly, in developing its own charges pursuant to section 108.012(b), must the THCIC comply with GSC rule, 1 TAC §111.64?

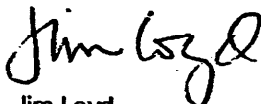
1 TAC §111.64 Requesting an Exemption reads:

(a) Pursuant to chapter 552.262(c) of the Public Information Act, a governmental body may request that it be exempt from part or all of these rules.

(b) State agencies must request an exemption if their charges to recover costs are higher than those established by these rules.

Thank you for your assistance with this matter. Cue Boykin, Assistant Attorney General, Administrative Law Division, provides legal counsel to the THCIC. You may contact him (475-4239) or me if you need further background information.

Sincerely,



Jim Loyd
Executive Director