



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 23, 1994

David R. Smith, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR94-479

Dear Dr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26507.

The Texas Department of Health (the "department") has received a request for "any and all information on Julia Pirie [a lay midwife] . . . [including] all writ[t]en, mic[r]ofilm, p[h]otographs or other material relating to Julia Pirie." You state that the request is from Ms. Pirie, although we note that the request letter is signed by "Michael J. Pirie" and does not claim to be written on behalf of Ms. Pirie. For the purposes of the this letter, however, we will assume that Ms. Pirie is the requestor.

The requested information, copies of which you have submitted to this office for review, *see* Gov't Code § 552.303, consists of records Ms. Pirie created concerning two of her clients. The documents relate to the clients' prenatal care and progress and include birth progress notes detailing physical conditions, complications, and progress of delivery. The information also includes copies of sonogram records and lab reports that you advise Ms. Pirie ordered. You aver that you have not received any authorization from the clients to disclose the requested information to Ms. Pirie.

You believe that section 552.101 of the Government Code excepts the requested information from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the requested information is confidential under the United States constitution.

Under the federal constitution, a person has a right to keep private, among other things, information regarding that person's right to make certain kinds of important decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 678 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The "zones of privacy" include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

In Open Records Decision No. 237 (1980) at 1 this office considered the confidentiality of

incident reports filed by ambulance drivers and attendants who are employees of the Emergency Medical Service System of the El Paso City-County Health Unit. Each report relates to emergency medical treatment and transportation to a hospital of persons who have given birth under the care of lay midwives. The reports describe in detail each patient's physical condition, the circumstances surrounding the birth of the infant, and the emergency treatment administered to both mother and child.

Id. The decision concluded that the information at issue was private under either the common law or constitutional law and that, therefore, the statutory predecessor to section 552.101 required the governmental body to withhold the information from the requestor. *Id.*

Similarly, we believe that the information this requestor seeks is private under either the common law¹ or constitutional law. Section 552.101 thus excepts the information from required public disclosure. You inquire, however, whether Ms. Pirie has a special right of access to the records because she either created them or caused them to be created. We conclude that she does not.

Section 552.023(a) of the Government Code provides a person or the person's authorized representative with a special right of access to information in the possession of a governmental body that relates to the person and "that is protected from public disclosure by laws intended to protect that person's privacy interests." Here, the requested information is protected from public disclosure to protect the client's privacy interests, not the midwife's. Moreover, we find no evidence that the requestor is the authorized representative of either of the clients.

¹As stated above, section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by judicial decision, *i.e.*, information confidential under the common law. In *Industrial Foundation*, 540 S.W.2d at 685, the Texas Supreme Court held that information is confidential under the common law if it (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public.

Consequently, section 552.023(a) does not provide Ms. Pirie with a special right of access to the records. Additionally, we are unaware of any other statute that provides Ms. Pirie with a right of access to the records requested here. We therefore conclude that the department must not release the information to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LRD/rho

Ref.: ID# 26507

Enclosures: Submitted documents

cc: Mr. Michael J. Pirie
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(w/o enclosures)