



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Mr. William S. Nail
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR95-087

Dear Mr. Nail:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30129.

The Employees Retirement System of Texas ("ERS") has received a request from Southwest Texas State University (the "university") for information relating to inpatient health services provided to its employees who participate in the HealthSelect option under the Texas Uniform Group Insurance Program. Specifically, the university seeks "a quarterly listing of the names of our patients who have received in-patient services during the most recent three month period . . . [including] the provider." You seek to withhold the requested information under sections 552.101 and 552.102 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with common-law privacy. Section 552.102 excepts "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 of the Government Code protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information must be withheld on common-law privacy grounds only if it is highly intimate or

embarrassing and is of no legitimate concern to the public. While common-law privacy may protect an individual's medical history, *see, e.g.*, Open Records Decision Nos. 539 (1990); 455 (1987); 422 (1984), it does not protect all medically related information, *see* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983). This office has determined in previous decisions that common-law privacy protects the following medical information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81 (1983); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We need not determine, however, whether common-law privacy protects the information requested here, because a state agency generally may transfer information to another state agency or any other governmental body subject to the Open Records Act without violating the confidentiality of the information if the agency to which the information is transferred has the authority to receive it, Open Records Decision No. 516 (1989), unless a statute prohibits such a transfer, Attorney General Opinion JM-590 (1986). In this case we are not aware of any statute that prohibits transfer of the requested information to the university. Assuming that the university has the authority to receive such information regarding its employees, we conclude that ERS may transfer the information to the university without destroying the confidentiality of any of the information that may be protected by common-law privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

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cc: Mr. Bill Nance
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