



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1995

Honorable Rick Perry
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-098

Dear Commissioner Perry:

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# 27420.

The Department of Agriculture has received a request for its file on Incident No. 04-92-0002 (an incident involving the alleged misapplication of an herbicide). You state that you have forwarded the file to the requestor except for certain medical information relating to the incident, because you question whether common-law privacy excepts the medical information from required public disclosure. Common-law privacy protects information only if it "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 if the information is of no legitimate concern to the public." Open Records Decision No. 478 (1987) at 3. The Department of Agriculture memorandum contains information about the incident, but it is neither intimate nor embarrassing and it may be of legitimate concern to the public. Therefore, you must release the memorandum.

The other document, however, identified as "Progress Notes," was apparently prepared by a physician and released to the department for the purpose of your investigation. The Medical Practice Act, article 4495b, V.T.C.S., makes confidential "records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). That act continues to protect such records when they have been delivered into other hands.

Id. § 5.08(j)(3). Section 5.08(j)(3) provides for further release of confidential medical records obtained with a valid consent for release only if the disclosure “is consistent with the authorized purposes for which consent to release the information was obtained.” *See also id.* § 5.08(c). Therefore the Medical Practice Act prohibits the further release of this document if it was indeed created by a physician unless the department concludes that further release is authorized pursuant to section 5.08(j)(3). Open Records Decision No. 565 (1990) at 7.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 27420

Enclosures: Submitted documents

cc: Mr. Anthony Daniel
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(w/o enclosures)