



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 17, 1995

Mr. Michael D. Manno  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR95-1084

Dear Mr. Manno:

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# 36042.

The Texas Department of Agriculture (the "department") received a request for an investigative report relating to a pesticide application. You have provided a copy of the investigative report, and assert that the attached medical records and references to those records are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b. You also assert that section 552.107 of the Government Code excepts certain information you claim is within the attorney client privilege.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08 provides in pertinent part:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

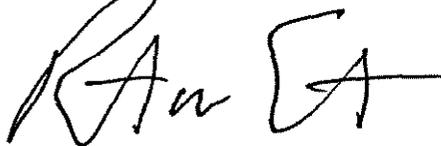
(c) Any person who receives information from confidential communications or records as described in this section other than persons ... acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

In addition, 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." The submitted documents contain medical records created by a physician. This information is made confidential by section 5.08(b). See Open Records Decision No. 565 (1990). Similarly, information in the file that has been extracted from the medical records is made confidential by section 5.08(c). Thus, further release is authorized only as outlined in sections 5.08(c) and 5.08(j)(3) of the Medical Practice Act, V.T.C.S. article 4495b. We have marked the information made confidential under the Medical Practice Act.

You also claim that certain information is excepted as attorney-client information under section 552.107(1). The attorney general has interpreted this exception narrowly to protect only information that falls within the attorney-client privilege. Open Records Decision No. 574 (1990) at 4-5. The exception protects confidential client communications made to an attorney for the purpose of rendering legal advice and also protects an attorney's legal advice or opinion. *Id.* Section 552.107(1) does not, however, protect purely factual information. *Id.*; Open Records Decision No. 462 (1987) at 9-11. We have marked the information that you have submitted that may be withheld under section 552.107(1).<sup>1</sup>

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 should 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,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/

Ref.: ID# 36042

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<sup>1</sup>Although we were able to determine the applicability of section 552.107 from the face of the submitted documents, we note that you did not provide our office with any additional information regarding the applicability of section 552.107. In order for our office to find that information is excepted under section 552.107, a governmental body must demonstrate that the information is either a confidential communication made by a client to an attorney for the purpose of rendering legal advice, or that the information contains the legal advice or opinion of an attorney. Open Records Decision No. 574 (1990) at 4-5. Additionally, we note that a governmental body may not circumvent the Open Records Act by transferring information to or through its attorneys. *Id.*

Enclosures: Marked documents

cc: S.T.B. Jackson  
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