



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 6, 1996

Mr. Barry R. Werner  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
Municipal Building  
Dallas, Texas 75201

OR96-1604

Dear Mr. Werner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100490.

The City of Dallas (the "city") received a request for the "[r]atio of IAD Comps Dept wide and [t]hose involving Property / Auto Pound Division for 93, 94, and 95," the "[r]atio of [g]rievances filed by civilian and sworn Dept / Property - Auto Pound for yrs 93, 94, and 95," and "the [d]isciplinary record for P.S.O. Anthony Vacio - Auto Pound." You have submitted medical records from Mr. Vacio's personnel file to this office for review. You claim that these records are excepted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>1</sup> It is not apparent to us how these medical records are responsive to the request; however, because you have identified these records as responsive to the request, we will determine whether the records are subject to required public disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that Mr. Vacio's medical records are excepted from disclosure under section 552.101 as information made confidential by the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. Section 5.08(b) of the MPA provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are *created or maintained by a physician* are

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<sup>1</sup>As you seek only to withhold the submitted medical records from disclosure, we assume that you have released to the requestor all of the other information in the city's possession that is responsive to the request.

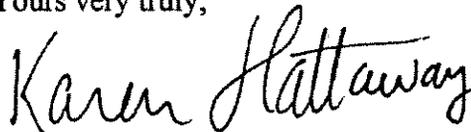
confidential and privileged and may not be disclosed except as provided in this section. [Emphasis added.]

Most of the records at issue here were created or are maintained by a physician. Those records are confidential and may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See § 5.08(c), (j). However, one submitted document, the "Light Duty Report," is not protected by the MPA. Therefore, we must consider whether the "Light Duty Report" is excepted from disclosure under section 552.102 of the Government Code.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Having reviewed the information contained in the "Light Duty Report," we find that it is not highly intimate and embarrassing. Thus, the "Light Duty Report" is not excepted from disclosure under section 552.102 of the Government Code and must be released to the requestor.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 100490

Enclosures: Submitted documents

cc: Mr. Rickey Bunch  
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(w/o enclosures)