



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 30, 1997

Mr. C. Robert Heath  
Bickerstaff, Heath, Smiley,  
Pollan, Keever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR97-1239

Dear Mr. Heath:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106184.

Collin County (the "county") received a request for all information detailing the payments made by the county to identified doctors and health care facilities from 1988 to 1991. You explain that the county does not object to providing the payment information. You are concerned, however, that the requested information may implicate the privacy interests of the individual patients. You assert that the information may be excepted from disclosure by section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 provides that information is excepted from disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Some of the records at issue are medical records made confidential by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, in conjunction with section 552.101 of the Government Code. Access to medical records is governed by provisions of the MPA rather than chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 5.08(b) and (c) provide:

(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 the persons listed in Subsection (h) of this section who are 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.

Section 5.08(j)(3) provides that medical records may be released upon the written consent of a patient when the consent specifies: (1) records covered by the release, (2) reason or purpose for release, and (3) person to whom the information should be provided. Also, section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which the county obtained the records. Open Records Decision No. 565 (1990) at 7. As the requestor has not complied with the access provisions of the MPA, the county must withhold the marked medical records from disclosure.

Additionally, subchapter G of chapter 241 of the Health and Safety Code provides for the disclosure of health care information in the possession of hospitals. Section 241.152(a) of the Health and Safety Code provides that "a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative." "Health care information" means "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." Health & Safety Code § 241.151(1). Section 241.153 provides several instances in which a patient's health care information may be disclosed without the patient's written authorization. One such instance is if the disclosure is to "a federal, state, or local government agency or authority to the extent authorized or required by law." *Id.* § 241.153(3). There is no specific provision authorizing the county to re-release the health care information. Therefore, it remains confidential under section 241.152 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. We have marked the information obtained from hospitals that this office has determined is confidential.

Finally, section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. After reviewing the remaining documents that are not confidential by statute, we do not believe that they are protected by a right of privacy. The documents do not directly identify any specific patient.<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

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<sup>1</sup>We note, however, that a social security number obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990 may also be confidential by federal law. 42 U.S.C. § 405(c)(2)(C)(viii); *see also* Open Records Decision No. 622 (1994).

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 106184

Enclosures: Submitted documents

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