



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1997

Mr. John T. Richards  
Assistant General Counsel  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR97-1704

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107632.

The Texas Department of Health (the "department") received a request for information concerning certain complaints filed against the Denton Regional Medical Center. You assert that portions of the requested information are made confidential by various state statutes or by the common-law right to privacy and therefore are excepted from required public disclosure under section 552.101 of the Government Code. Government Code section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. You have submitted the requested information to this office for review.

Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), applies to "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." The submissions contain not only medical records and communications, but also information that appears to have been obtained from those medical records and communications. Both are confidential and may be disclosed only in accordance with the MPA. See V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991).

Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health and Safety Code § 611.001 (defining “patient” and “professional”). The submissions contain not only a professional’s records and communications, but also information that appears to have been obtained from such records and communications. Both may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health and Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Section 773.091 of the Health and Safety Code applies to “[c]ommunications between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient” and “[r]ecords of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider.” Such communications and records may be released only in accordance with subchapter D of chapter 773 of the Health and Safety Code. *See* Health and Safety Code §§ 773.091(a), (b), (c); *but see id.* § 773.092 (limiting extent of confidentiality).

We agree that these three confidentiality statutes apply to portions of the requested information.<sup>1</sup> We have marked the documents accordingly by bracketing confidential information or indicating that a document is confidential in its entirety.

We observe that portions of the requested information consist of reports about the hospital’s compliance with federal law as a medicare provider. Federal regulations require the department to release these reports, provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988) at 5. We have marked the documents that the department must release in accordance with federal regulations.

You have marked one small portion of information as covered by section 161.032 of the Health and Safety Code, which makes confidential the “records and proceedings of a medical committee.” Under section 161.031(a) of the Health and Safety Code a “medical committee” includes any committee of a hospital, medical organization, or extended care facility. It includes an ad hoc committee appointed to conduct a specific investigation as well as a committee established under the bylaws or rules of the organization. Health &

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<sup>1</sup>We assume that the complaint investigations were not conducted pursuant to chapter 48 of the Human Resources Code. Section 48.101 of the Human Resources Code makes confidential certain information relating to an investigation of a report of abuse, neglect, or exploitation of an elderly or disabled person.

Safety Code § 161.031(b). While the records and proceedings of a medical committee are confidential, *id.* § 161.032(a), the confidentiality does not extend to "records made or maintained in the regular course of business by a hospital." *Id.* § 161.032(c); Open Records Decision No. 591 (1991). Documents generated by a committee in order to conduct open and thorough review, as well as documents prepared by or at the direction of the committee for committee purposes, are confidential.

We believe the information is a record or proceeding of a medical committee made confidential by section 161.032 of the Health and Safety Code. Consequently, the department must withhold the information from the requestor.

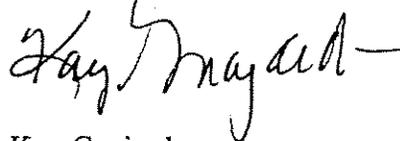
Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found.of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information 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. *See id.*

While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). The right to privacy lapses at death. We find that portions of the requested information are protected from disclosure under the common-law right to privacy and have marked the documents accordingly.

Finally, you submitted one document marked as covered by section 552.107(1) of the Government Code. However, as you did not timely raise this exception, it is waived. *See* Open Records Decision No. 630 (1994).

We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 107632

Enclosures: Marked documents

cc: Ms. Bonnie Wulff  
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(w/o enclosures)