



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0287

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112410.

The Texas Department of Health (the "department") received a request for information relating to complaint number 97-40444. You contend that some of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, and the common-law right to privacy. We have considered the exception you claim and have reviewed the information at issue.¹

Section 552.101 excepts from required public disclosure information that is deemed confidential by law, including information made confidential by judicial decision. This exception 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.* In this case, common-law privacy protects from disclosure the identities of the patients involved in the requested complaint file. We

¹The department failed to timely request an open records decision from this office. Gov't Code § 552.301. In most cases, failure to timely request a decision results in the legal presumption that the requested information is presumed to be open to the public and only the demonstration of a compelling interest can overcome the presumption. *See Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). However, the presumption of openness may be overcome when the requested information is deemed confidential by law. *See Open Records Decision No. 150 (1977).*

have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.101 also excepts from disclosure information made confidential by statute such as the MPA. Section 5.08 of 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.” Some of the information at issue appears to have been obtained from records and communications protected by the MPA.² This information is 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). We have marked the information that falls within the scope of the MPA.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 112410

Enclosures: Marked documents

cc: Ms. Gretchen Thorp
Administrator
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1803 Old Spanish Trail
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(w/o enclosures)

²We note that some of the information at issue appears to have been obtained from hospital records. Hospital treatment is routinely conducted under the supervision of physicians. Thus, information relating to the diagnosis and treatment of a patient in a hospital is confidential under section 5.08 of the MPA. Open Records Decision No. 546 (1990).