



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1998

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

OR98-0444

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# 112688.

The Texas Department of Health (the "department") received a request for the most recent surveys of the West Texas Renal Care Facility in San Angelo, the Brownwood Renal Care Center, and the Val Verde Renal Care Center in Del Rio. You state that most of the requested information has been released. You assert, however, that portions of the requested documents are excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential by law, including information made confidential by judicial decision, the constitution, and by statute. You raise two statutes as well as the common-law right to privacy.

Section 552.101 encompasses information that is confidential pursuant to both constitutional and common-law rights of privacy. The records you have submitted, however, do not identify any specific patients or other persons. Thus, we do not believe that any right of privacy is implicated by release of the information at issue. *See Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995); *cf. Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The department may not withhold any portion of the information based on a right to privacy.

The first statute the department raises for portions of the information is the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b). This statute provides:

(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.

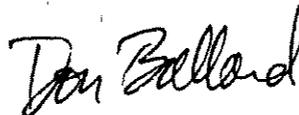
(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with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

Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 (1990) at 7. Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). We agree that portions of the requested information consist of information obtained from confidential medical records. Thus, the department must release this information in accordance with the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, § 5.08 (c), (j), (k). We have marked the documents accordingly.

The second statute the department raises is section 161.032(a) of the Health and Safety Code, which makes confidential the "records and proceedings of a medical committee." "Medical committee" includes any committee of, among other entities, "a medical organization" and "an extended care facility." Health Safety Code § 161.031(a). You raise section 161.032(a) for information that appears to have been obtained from the organization's minutes of a medical staff quality assurance committee. We believe that you may withhold this information under section 161.032(a). We have marked the documents accordingly.

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,



Don Ballard
Assistant Attorney General
Open Records Division

Ref: ID# 112688

Enclosures: Marked documents

cc: Ms. Karen Walton
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(w/o enclosures)