



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1998

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

OR98-0713

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113236.

The Texas Department of Health (the "department") received a request for information concerning an investigation of a death at Glenwood Hospital. You state that some of the requested information has been released. You claim that portions of the remaining documents are protected from required public disclosure based on section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses information protected by other statutes. You raise section 48.101 of the Human Resources Code, which pertains to disclosure of information about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

We believe that one of the reports, which we have marked, is confidential pursuant to section 48.101(a) of the Human Resources Code. *See* Hum. Res. Code § 48.082(a); *see also id.* § 48.002 (definitions). Consequently, the report must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b), 25 T.A.C. § 1.207; *but see* Hum. Res. Code § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

Some of the requested information consists of confidential medical information. The Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b) 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.

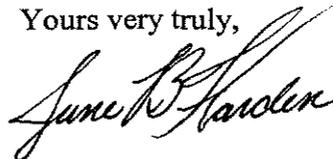
Finally, we note that the department must withhold some of the submitted information under section 773.091 of the Health and Safety Code. Section 773.091(b) of the Health and Safety Code provides as follows:

Records 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 are confidential and privileged and may not be disclosed except as provided by this chapter.

Accordingly, the department must withhold the EMS information, which we have marked, under section 552.101 of the Government Code. In addition, the department must release the remainder of the submitted information in its entirety. The remaining information not protected by section 552.101 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ghg

Ref.: ID# 113236

Enclosures: Submitted documents

cc: Ms. Barbara Smith
Vice-Chair
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(w/o enclosures)