



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1998

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

OR98-1088

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 115284.

The Texas Department of Health (the "department") received a request for information concerning an investigation of a certain complaint about care received at the Memorial Spring Shadows Glen Hospital, in particular, "a report of content and a list of the deficiencies found." The department seeks to withhold portions of the requested information from the requestor based on section 552.101 of the Government Code in conjunction with several state confidentiality statutes as well as the common-law right to privacy.

Section 552.101 excepts from required public disclosure information that is confidential by law, including information deemed confidential by law. You marked some information as covered by section 161.032(a) of the Health and Safety Code. This provision provides that "records and proceedings of a medical committee are confidential and are not subject to court subpoena." The confidentiality does not extend to "records made or maintained in the regular course of business by a hospital." Health & Safety Code § 161.032(c). A "medical committee" includes, among other things, any committee of a hospital. *Id.* § 161.031(a). Documents generated by a committee in order to conduct open and thorough review are confidential, as are documents that have been prepared by or at the direction of the committee for committee purposes. *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986) (orig. proceeding).

¹The department failed to timely request an open records ruling from this office, a fact that in some cases may result in the presumption that the requested information is public. See Gov't Code §§ 552.301, .302.; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In this case, the presumption is overcome by the fact that the information is deemed confidential by law. See Open Records Decision No. 150 (1977).

We have reviewed the information. We conclude that portions of the information consist of "records and proceedings of a medical committee" made confidential by section 161.032 of the Health and Safety Code. Accordingly, the department must not release these records. Gov't Code § 552.101.

You have marked certain information that could serve to identify patients as covered by the common-law right to privacy. Section 552.101 excepts from required public disclosure information considered to be 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.* We believe that in this case the information is protected from required public disclosure based on the common-law right to privacy.²

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 Hastings
Assistant Attorney General
Open Records Division

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Ref.: ID# 115284

Enclosures: Submitted documents

²In light of our conclusion on privacy grounds, we need not address your other arguments against disclosure at this time.