



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

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

OR98-1362

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# 115394.

The Texas Department of Health (the "department") received an open records request for "any Hospital Survey or Report that [the department] has on file for Columbia Medical Arts Hospital in Dallas, Texas and Columbia Specialty Hospital in Dallas, Texas." You state that the department has released some responsive information to the requestor. You seek to withhold some records, or portions thereof, pursuant to section 552.101 of the Government Code in conjunction with various other confidentiality statutes.

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 inquire whether some of the information at issue that the department obtained from the referenced hospitals is confidential under chapter 241 of the Health and Safety Code. Subchapter G of chapter 241 of the Health and Safety Code provides for the disclosure of health care information in the possession of hospitals. Section 241.152(a) of the Health and Safety Code provides that "a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative." "Health care information" means "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." Health & Safety Code § 241.151(1). Section 241.153(3) provides several instances in which a patient's health care information may be disclosed without the patient's written authorization. One such instance is if the disclosure is to "a federal, state, or local government agency or authority to the extent

authorized or required by law.” *Id.* § 241.153(3). There is no provision which addresses the re-release of the health care information by the department. Therefore, we do not believe that section 241.152 is applicable in this instance. The department may not withhold any information under section 241.152 of the Health and Safety Code.

You next argue that some of the requested records, as well as portions of other requested records, must be withheld as confidential medical records. 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 records at issue contain information that appears to have been directly obtained from medical records and communications and such information 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 Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked in brackets the information that may be released only in accordance with this statute.¹

You next contend that section 161.032 of the Health and Safety Code makes confidential the minutes of certain meetings held by the referenced hospitals’ staff. Section 161.032 provides:

(a) The records and proceedings of *a medical committee* are confidential and are not subject to court subpoena.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section and Section 5.06, Medical Practices Act . . . do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, or extended care facility. [Emphasis added.]

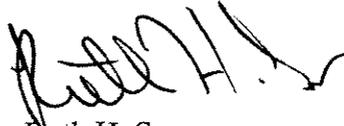
Section 161.031 of the Health and Safety Code defines “medical committee” to include “any committee, including a joint committee,” of a hospital or an extended care facility. We agree that the minutes of meetings conducted by hospital staff must be withheld from the public pursuant to section 161.032(a) of the Health and Safety Code.

¹We note that in this instance other medical information contained in the records at issue was obtained by the department from sources other than medical records, such as interviews with the complainant or medical staff, and as such is not governed by the MPA.

Finally, we address whether certain laboratory reports are made confidential under section 81.046 of the Health and Safety Code. Chapter 81 of the Health and Safety Code, of which section 81.046 is a part, is commonly referred to as the Communicable Disease Prevention and Control Act. In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created by the department during an investigation under chapter 81 is confidential and may not be released unless an exception set out in the statute applies. Assuming that the laboratory reports you have submitted to this office were gathered by the department pursuant to the provisions of chapter 81, we agree that section 81.046(b) governs the release of this information. We therefore conclude that the department must withhold the laboratory reports in their entirety.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 115394

Enclosures: Marked documents

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(w/o enclosures)