



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 20, 1998

Ms. Leah Davis-Bates  
Attorney for the Department  
Texas Department of Public Safety  
5805 N. Lamar Boulevard  
Austin, Texas 78773-0001

OR98-1983

Dear Ms. Davis-Bates:

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# 117598.

The Texas Department of Public Safety (the "department") received a request for information relating to a specific accident. You state that most of the requested information will be released. However, you claim that information relating emergency medical services ("EMS") and emergency room treatment of the accident victims is excepted from disclosure under section 552.101 of the Government Code.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated July 17, 1998, that you had failed to submit the information required by section 552.301(b), specifically a copy of the written request for information. We requested that you provide this information to our office within seven days from the date of receiving

the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public. *See* Open Records Decision No. 497 (1988) (fact that submitting copies for review to Attorney General may be burdensome does not relieve a governmental body of the responsibility of doing so). As of the date of this letter, you have not provided our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request is presumed to be public. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of section 552.101 provides such a compelling reason.

Section 552.101 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 argue that the submitted documents must be withheld as confidential medical records. We agree. 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 submissions to this office are medical records 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), 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 the information that must be withheld under this statute.

We also note that some of the submitted documents must be withheld under section 773.091 of the Health and Safety Code. Section 773.091(b) of the Health and Safety Code provides as follows:

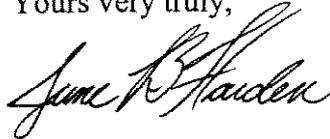
Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and 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.

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/ch

Ref.: ID# 117598

Enclosures: Submitted documents

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(w/o enclosures)