



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 14, 1998

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

OR98-2425

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# 118787.

The Texas Department of Health (the "department") received a request for "a copy of the final report of the Complaint Investigation Report that ended on 6/1/98, involving Glen Oaks Hospital in Greenville, Texas." You claim, however, that several marked portions of the documents are excepted from disclosure by section 552.101 of the Government Code as information made confidential by law. You have submitted the requested information for our review.

Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

It appears that the department received the request for information on June 13, 1998. You did not request a decision from this office until July 29, 1998. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the

Government Code. However, since you assert that the requested information is made confidential by other laws, we will examine whether the documents at issue are public and must be disclosed.

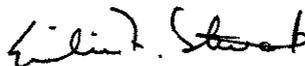
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that portions of the documents must be withheld as confidential medical records. We agree.

Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." See also Health and Safety Code § 611.001 (defining "patient" and "professional"). The submission contains information that appears to have been obtained from such records and communications. This information may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health and Safety Code § 611.002(b); see *id.* §§ 611.004, 611.0045.

Section 552.101 of the Government Code also encompasses common-law privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Any information that will serve to identify the patient should also be withheld based upon the rights to privacy recognized and protected by section 552.101 of the Government Code. In general, we agree with your highlighting of the information that must be withheld from disclosure, but we have identified in brackets three items on page three of the report of contact that you must release.

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,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS/ch

Ref: ID# 118787

Enclosures: Submitted documents

cc: Ms. Cynthia Bishop  
1115 Walworth Street  
Greenville, Texas 75401  
(w/o enclosures)