

January 13, 1999

Ms. Stacy E. Sallee  
Associate Counsel  
Texas Health and Human  
Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR99-0093



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Dear Ms. Sallee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120940.

The Health and Human Services Commission (the commission) received a request for "all information, reports, documents, or similar information regarding any inspection or findings" concerning Peoples Care of Beeville. You claim that the responsive information is excepted from disclosure by section 552.101 of the Government Code. You have submitted a sample of the information you seek to withhold.<sup>1</sup>

Initially, we point out that some of the submitted documents appear to be covered by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. This statute 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

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 at 7 (1990). 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). The submissions to this office appear to contain medical records and communications that are confidential 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 constitute protected MPA records). We have marked the records that appear to fall under this statute.

You explain that the remaining requested information relates to Medicaid recipients who are housed at the nursing facility which is the subject of this request. The submitted information includes letters from the commission to the nursing facility, utilization review reports and documentation, corrective action requests, and monitoring documentation. You state that the "reports that were generated in summary form and the resulting letters to the nursing facility are based on the information concerning each of the [named] Medicaid recipients." You argue that all of the submitted information must, therefore, be withheld because it is confidential Medicaid information under section 12.003 of the Human Resources Code. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(Emphasis added).

In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on

disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. See Hum. Res. Code § 21.012; Open Records Decision No. 166 (1977). You state that release here is not for the administration of the assistance programs. Consequently, those documents related to clients, applicants, and recipients of the assistance programs must be withheld under section 552.101. Some of the submitted documents, however, do not relate to clients, applicants, or recipients; they are records which reflect the commission's regulation of the nursing facility. These documents do not mention, refer to, or in any way identify clients, applicants, or recipients of public assistance. These documents consist of the correspondence to the nursing facility and other monitoring documentation. We do not believe that these documents may be withheld under the rationale of Open Records Decision No. 584 (1991). See Open Records Decision No. 487 at 5-6 (1988). We have marked the documents that are not confidential and must be released. The remaining records must be withheld.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 120940

Enclosures: Marked documents

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