

January 22, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

OR99-0189

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

Dear Ms. Wiegman:

JOHN CORNYN
Attorney General

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121496.

P.O. Box 12548
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The Department of Health received a request for the investigation file on a particular facility. You seek to withhold some of the requested information under section 552.101 of the Government Code in conjunction with V.T.C.S. article 4495b.¹

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. V.T.C.S. article 4495b, the Texas Medical Practice Act, provides in part:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a

¹When a request for an open records decision is not made within the time period prescribed by section 552.301 of the Government Code, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., 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).

You received the request for information on September 30, 1998. You did not seek a decision from this office until October 28, 1998. Consequently, you have not met your statutory burden. Gov't Code 552.301. The requested information is therefore presumed public. You contend, however, that some of the requested information is confidential by law. Thus, we will examine the extent to which you must withhold the requested information.

physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). You have marked the documents that you claim must be withheld pursuant to article 4495b. The marked information appears to contain medical record information subject to that article. None of the exceptions to non-disclosure set out in the article appear to apply here. Accordingly, you must withhold, under article 4495b, the information you have marked. You must release the remaining portions of the requested information.

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 121496

Enclosures: Submitted documents

cc: Mr. Saad A. Hassan
6305 Westward Drive, # 158
Houston, Texas 77081
(w/o enclosures)