

January 28, 1999

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

OR99-0263



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

— * —

JOHN CORNYN
Attorney General

— * —

P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

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# 121945.

The Texas Department of Health ("TDH") received a request for information regarding Medical Center of Plano, a hospital licensed by TDH. You have released information to the requestor, but you contend that the information you have highlighted must be withheld from public disclosure under Government Code section 552.101 in conjunction with section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b, Health and Safety Code section 161.032 and the common-law right to privacy. We have considered the exception you claim and have reviewed the documents at issue.

Section 5.08 the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, provides in part:

(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 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.

V.T.C.S. art. 4495b, § 5.08. 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 medical records is not governed by chapter 552 of the Government Code, but rather the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. See V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). We agree with your MPA markings and conclude that TDH may only release this information in accordance with the MPA.

Section 161.032(a) of the Health and Safety Code makes confidential the "records and proceedings of a medical committee." "Medical committee" includes any committee of, among other entities, "hospital" and "an extended care facility." You raise section 161.032(a) for information that appears to be derived from quality assurance committee minutes and records relating to the bylaws committee's proposed bylaws revisions. We agree that you must withhold the information you have marked as protected under section 161.032(a).

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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). We agree with your markings of the information that must be withheld under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

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,

David Van Brunt Price
David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 121945

Enclosures: Submitted documents

cc: Mr. Jason C. N. Smith
Law Offices of Art Bender
600 Eighth Avenue
Fort Worth, Texas 76104
(w/o enclosures)