



May 10, 1999

Mr. Chad E. Jones  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR99-1262

Dear Mr. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124047.

The city of College Station (the "city") received a request for report number 98-013637. You have supplied the responsive information to this office. You assert that a portion of this information may be made confidential by statute. Section 552.101 of the Public Information Act excepts such information from disclosure. We have reviewed the submitted information and the exception implicated by your argument.

You inform this office that the request for information was received by the city on January 27, 1999. The city's request for opinion was posted in an envelope date marked "Feb 15 '99" by your postage meter. Thus, the city failed to request an open records decision from this office within the ten day statutory period as required under Government Code section 552.301. This failure to timely request a decision results in the legal presumption that the requested information is open to the public. The presumption arising with the 10-day rule can be overcome only by a compelling demonstration that the information should not be released, e.g., where it is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977).

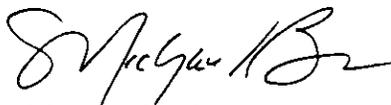
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You state that a portion of the submitted information may be subject to section 5.08 of the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. The MPA controls release of communications between one licensed to practice

medicine relative to or in connection with any professional services as a physician to a patient and records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. V.T.C.S art. 4495b § 5.08. The submitted information has been marked to indicate those portions that are within the ambit of this statute.

Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common-law privacy) 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). The disclosure of many of the facts contained in the responsive information implicates common-law privacy interests. We conclude that these interests may be protected by redacting the names and identifiers of the individuals concerned. We have marked the submitted documents to indicate the information that must be withheld. The balance of the information must be released.

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.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 124047

encl. Submitted documents

cc: Mr. Michael Thompson  
P.O. Box 5781  
Bryan, Texas 77805  
(w/o enclosures)