



June 10, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR99-1626

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125216.

Travis County (the "county") received a request for all documents pertaining to the requestor. You assert that the requested records are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

Section 552.101 of the Government Code provides an exception from disclosure for records that are confidential by law. Section 5.08(b) and (c) of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, 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.

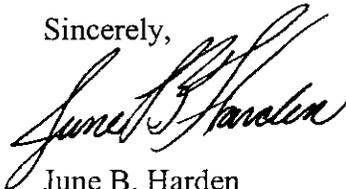
(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the county obtained the records. Open Records Decision No. 565 at 7 (1990). We have reviewed the documents you seek to withhold as confidential medical records. We agree that most of these documents are medical records and may be released only as provided under the MPA. We have, however, marked certain documents that are clearly not medical records and must be released to the requestor.

You also argue that the remaining submitted documents may be withheld under section 552.103. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex.App.-Austin 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You explain that the requestor has filed a "Prisoner Litigation" fee with a district court. You further explain that the district court "exercises exclusive control over the issuance of the Service of Citation and accompanying Petition formally instigating a lawsuit in federal court, which process usually takes six months from the date of filing the litigation fee." You have not explained, however, how the submitted documents relate to the litigation for the purposes of section 552.103. Consequently, you must release these documents to the requestor.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 125216

Encl. Submitted documents

cc: Dr. Ira R. Buchler
1414 Cardinal Hill Drive
Austin, Texas 78758
(w/o enclosures)