



June 21, 1999

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

OR99-1710

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125069.

The Texas Department of Health (the "department") received a request for information pertaining to a certain complaint relating to a hospital licensed by the department. You contend that the requested information is confidential, in whole or in part, under section 552.101 of the Government Code.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute. You cite to title 42, section 1306(a) of the United States Code and title 42, section 401.101 of the Code of Federal Regulations. The former provision, in subsection (a) prohibits disclosure of "any file record, report, or other paper, or any information" obtained at any time by or from the head or employees of the Department of Health and Human Services, except as the head of the agency prescribes by regulation and except as otherwise provided by federal law.

The federal regulation you reference, title 42, section 401.101, provides that the prohibition on disclosure in subsection (a) of section 1306, title 42, United States Code, applies to information "obtained by Medicare intermediaries or carriers in the course of carrying out agreements" under provisions of the Social Security Act, "and any other information subject to" the above-cited section of the United States Code. You also reference explanatory materials in the Health Care Finance Administration's "State Operations Manual" and in letters from the Department of Health and Human Services.

You characterize the department's role in administering the federal programs in question as a "state survey agency." The copy you provided of the May 29, 1991 letter from the Department of Health and Human Services distinguishes between "survey agencies" and the

“intermediaries or carriers” to which the above regulation appears to apply. *But see* HCFA State Operations Manual § 3300 (treating survey agencies and intermediaries together). Moreover, you have not, in our opinion, demonstrated that the material you submitted was obtained “in the course of carrying out” the agreements under the Social Security Act within the meaning of the regulation.

You also cite to subsections (e) and (f) of the above-referenced federal statute, section 1306. Those provisions require the public disclosure of certain “official reports” by the Secretary of the Department of Health and Human Services, including “program validation survey reports and other formal evaluations of the providers of services” “except that such reports shall not identify individual patients, individual health care practitioners, or other individuals” and provided that the entity whose services are being evaluated has had the opportunity to review and comment on the reports. Even assuming, however, that the subsection (e) and (f) provisions are also applicable to the department, you have not in our opinion demonstrated that the submitted information constitutes such “official reports.” In summary, you have not, in our opinion, demonstrated that any of the information at issue is protected by the federal statutes and regulations you raised. The department must release the requested records. *But see* Gov’t Code § 552.352 (release of confidential information constitutes misdemeanor).

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/eaf

Ref.: ID# 125069

Encl. Submitted documents

cc: Mr. Ken R. Spannegel  
41 Cascade Caverns  
Bourne, Texas 78015  
(w/o enclosures)