



August 18, 1999

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

OR99-2332

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# 126867.

The Texas Department of Health (the “department”) received a request for information regarding a particular patient and Christus Spohn Hospital. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer’s privilege and the Medical Practice Act. We have considered the exception you claim and reviewed the documents at issue.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the informer’s privilege. The informer’s privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). In this case, we agree that the identity of the complainant is protected by the informer’s privilege and may be withheld as marked under section 552.101.

The Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b) 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)(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 governed by the MPA, not the Public Information Act. 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 No. 598 (1991). We agree that the information you have marked is subject to the MPA. The department may only release this information in accordance with the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, §§ 5.08 (c), (j), (k).

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 126867

Encl. Submitted documents

cc: Ms. Kitty Knight  
ProClaim America, Inc.  
32721 Aubry Way  
Bulverde, Texas 78163  
(w/o enclosures)