



August 23, 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

OR99-2379

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# 125961

The Texas Department of Health (the "department") received a request for the results of the most recent complaint investigation against All Saints Episcopal Hospital in Ft. Worth Texas, conducted by the Arlington Zone Office. You have submitted a "Report of Contact" which you state is the only information responsive to this request. You contend that this information is excepted from disclosure by section 552.101 of the Government Code in conjunction with federal statutes and regulations.

Section 552.101 requires withholding information made confidential by statute. You cite to title 42, section 1306(a) of the United States Code, which 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 United States Department of Health and Human Services, in the course of discharging duties under the Social Security Act, except as the head of the agency prescribes by regulation and except as otherwise provided by federal law. You represent that title 42, section 401.101 of the Code of Federal Regulations as well as section 3300 of the HCFA State Operations Manual states that section 1306(a)'s prohibition against disclosure applies to state survey agencies.

You explain that the department is the Medicare state survey agency pursuant to an agreement entered into between the Health Care Financing Administration (HCFA) and the department. You ask whether section 1306(a) of title 42 of the United States Code requires you to withhold the submitted Report of Contact. You also cite to subsections (e) and (f) of 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, including the reports of follow-up reviews." However, such official reports "shall not identify individual patients, individual health care practitioners, or other individuals" provided that the entity whose services are being evaluated has had the opportunity to review and comment on the reports. 42 U.S.C. § 1306(e), (f).

As you have not represented that the subject information was obtained in the course of carrying out the department's duties under its agreement with HCFA, we conclude that this Report of Contact does not fall within the scope of section 1306(a).

We note that the subject report includes information that is subject to section 5.08 the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. 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 have marked the information in the submitted documents that is subject to the MPA. The department may only release this information in accordance with the MPA. Open Records Decision No. 598 (1991). The balance of the report 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# 125961

Encl. Submitted documents

cc: Mr. Bennett Cunningham  
KTVT Television  
10111 N. Central Expressway  
Dallas, Texas 75231  
(w/o enclosures)