



August 26, 1999

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR99-2412

Dear Ms. LaRoe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126830.

The Tarrant County Sheriff's Department (the "department") received a request for copies of grievances that relate to health care and medical treatment which were filed by detainees and inmates at the Tarrant County Jail. Representative samples of those documents were submitted to this office for review.¹ You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.

According to the information provided to this office, all medical and health care grievances that are turned in to the department are referred to and handled by medical personnel employed by the Tarrant County Hospital District ("hospital district"). The forms indicate what type of treatment was prescribed and any follow-up information, as determined by hospital district care providers. You believe that the medical grievances may, therefore, be confidential under section 241.152 of the Health and Safety Code in conjunction with section 552.101 of the Government Code. Section 241.152(a) and (b) provide as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

(b) A disclosure authorization to a hospital is valid only if it:

(1) is in writing;

(2) is dated and signed by the patient or the patient's legally authorized representative;

(3) identifies the information to be disclosed; and

(4) identifies the person or entity to whom the information is to be disclosed.

Section 241.153(15) provides that health care information may be released without patient authorization "to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient." Section 241.153(1) provides that directory information about a patient may be disclosed to the public unless the patient "has instructed the hospital not to make the disclosure." Section 241.151(1) defines directory information to include information disclosing the presence of a person receiving outpatient services from a hospital, the nature of the person's injury, the person's municipality of residence, sex, age, and general health status described in terms such as "fair" and "good."

From your explanation of the relationship between the department and the hospital district, it appears that the patients receive outpatient care from the hospital district and that section 241.153 allows the hospital district and the department to share information concerning the inmates' health. Based upon your explanation that the hospital district provides all medical care and treatment of the patients as part of the outpatient services offered by the hospital district and that the health care grievance information is held by the department as an agent on behalf of the hospital district, we agree that most of the information at issue may not be released to the public. However, the directory information must be released as provided by section 241.151.

You also have asserted that the information at issue is protected from disclosure under common-law privacy as protected under section 552.101 of the Government Code. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be

highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information the supreme court considered intimate and embarrassing in *Industrial Foundation* included 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. In Open Records Decision No. 262 (1980), this office stated that information about a patient's injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 at 5 (1990) (information concerning emotional state may be protected by common-law privacy).

We note that some of the information in the complaint forms would generally be protected under a common-law right of privacy under section 552.101 of the Government Code. Since you have asserted that access to the information at issue is governed by chapter 241, access to the medical grievance information is governed by chapter 241 rather than chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991) (access to medical records governed by Medical Practice Act rather than chapter 552). Also, the general type of information which is released as directory information pursuant to section 241.151 does not appear to be the type of information that would generally implicate the inmates' privacy interests.²

We note that you also questioned whether the documents or portions of the documents at issue would be protected from disclosure under the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(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

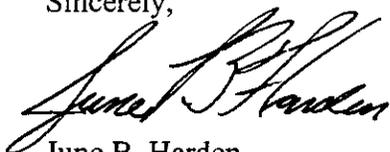
²You express concern that release of information would identify inmates with AIDS or HIV. We do not believe that identification of patients as having AIDS or HIV is the type of information generally released as directory information, but the computerized list of complaints provided to this office does appear to be directory information.

authorized purposes for which the information was first obtained.

Our review of the submitted sample documents indicates that they do not contain the type of information that is protected from disclosure under the Medical Practice Act.

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,

A handwritten signature in black ink that reads "June B. Harden". The signature is written in a cursive style with a large initial "J" and "B".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 126830

Encl. Submitted documents

cc: Mr. P. A. Humphrey
FW Weekly
1204-B West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)