



November 18, 1999

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

OR99-3307

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# 128953.

The Department of Health (the “department”) received a request for information related to a respiratory therapist formerly employed by the department. You assert that most of the responsive information has been released to this requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We note that the request for information was received by you on August 9, 1999, and that your request for our opinion was received by this office on August 26, 1999. Thus, the department failed to request an open records decision from this office within the ten-day statutory period as required under Government Code section 552.301. This failure to timely request a decision results in the legal presumption that the requested information must be released to the public. Gov’t Code §552.302. This presumption can be overcome only by a compelling demonstration that the information should not be released, *e.g.*, where it is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). As you have asserted that the information is made confidential by law, we have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments

to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You relate that the subject social security numbers were obtained and are maintained pursuant to provision of chapter 441 Government Code which were enacted in 1997. Based on your representation, we conclude that these social security numbers must be withheld under section 552.101 of the Government Code.

Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Applying that standard, our office opined that the identity of juvenile victims of serious sexual offenses is confidential. Open Records Decision No. 628 (1994). We have also held that the identities of all victims of serious sexual offenses is confidential. Open Records Decision No. 339 (1982). In this case, while no serious sexual offense is alleged, we consider descriptions of the offensive conduct to be protected by common-law privacy. We also consider references to marital difficulties to be protected by common-law privacy. We have bracketed the information that must be withheld under section 552.101 of The Government Code.

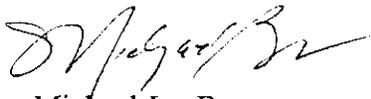
The submitted information also includes medical records. The release of such records is controlled by Vernon's Texas Civil Statutes article 4495b, section 5.08, the Medical Practices Act (the "MPA"). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). Section 5.08(j)(3) of the Act requires that any subsequent release of medical records be consistent with the purposes for which the records were obtained. Open Records Decision No. 565 at 7 (1990). Access to medical records is not governed by chapter 552 of the Government Code, but rather the MPA. Open Records Decision No. 598 (1991). The department may only release these medical records in accordance with the MPA.

We note that the submitted documents include information that may be excepted from disclosure by section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024, and peace officers, irrespective of their election under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994),

455 (1987). Other than information relating to a peace officer, information for any employee or former employee who made the request for confidentiality under section 552.024 after this request for information was made may not be withheld under this section. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

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# 128953

Encl. Marked documents

cc: Ms. Erika Henritz Knoblock
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(w/o enclosures)