



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 9, 2003

Ms. Rebecca L. Payne  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2003-3942

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182406.

The Texas Department of Human Services (the "department") received a request for the complete file of the investigation concerning Med Team, Inc., that resulted from a particular complaint number. You state that the department will withhold information constituting reports, records, and working papers used or developed during investigations conducted under section 142.009 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 2001-5348 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301). Although the department has released some responsive information to the requestor, you also claim that a portion of the submitted responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered your argument and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You claim that some of the submitted information is confidential under section 142.009(d)(5) of the Health and Safety Code. This section provides that "reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except . . . (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency[.]" Health & Safety Code § 142.009(d)(5). You acknowledge that the department is required to release the submitted state forms under section 142.009(d)(5).

You claim, however, that this section requires the department to withhold the identifying information contained in the state forms. You have highlighted that information. We agree that you must withhold the highlighted identifying information on the state forms under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code.

You also argue that the submitted documents contain information that is subject to the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Section 159.002 of the MPA, which governs the disclosure of medical records, provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is 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.

*Id.* § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. *See* Open Records Decision No. 598 (1991). You have highlighted the information contained in the submitted documents that you contend is governed by the MPA. We conclude that the department has demonstrated that only some of the highlighted information is subject to the MPA. We have marked this information which must be released only in accordance with the MPA.

Finally, we note that you argue that portions of the submitted information are confidential under section 552.101 and common-law privacy. Common-law 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. 540 S.W.2d at 683. However, in this instance, none of the patients whose privacy interests might otherwise be implicated are identified in the information. Therefore, because the identities of the patients are unknown, we conclude that the privacy interests of these patients have not been implicated. You may not withhold any of the submitted information under section 552.101 and common-law privacy.

In summary, you may withhold information constituting reports, records, and working papers used or developed during investigations conducted under section 142.009 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 2001-5348 (2001). The department must withhold the highlighted identifying portions of the state forms under section 552.101 of the Government Code in conjunction with section 142.009(d)(5) of the Health and Safety Code. The department may release the medical information we have marked only in accordance with the MPA. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/HPR/sdk

Ref: ID# 182406

Enc: Submitted documents

c: Mr. Lance D. Sharp  
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(w/o enclosures)