



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 25, 2003

Mr. Donald Jansky  
Assistant General Counsel  
Texas Department of Health  
1100 West 29<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2003-5942

Dear Mr. Jansky:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186483.

The Texas Department of Health (the "department") received a request for information related to the designation of Edinburg Regional Medical Center's basic trauma facility. You state that some information has been or will be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 provides in part:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the department received the present request on May 28, 2003. You did not request a decision from this office until June 20, 2003. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). As sections 552.101, 552.136, and 552.137 can provide compelling reasons for withholding information, we will address your arguments under these exceptions.

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 section encompasses information another statute makes confidential. You contend that portions of the submitted information are confidential pursuant to section 159.002 of the Occupations Code. We note that medical records are confidential under the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001 et. seq. Section 159.002 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). Medical records must be released upon 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. Medical records that pertain to a deceased patient may be released only on the signed consent of the decedent's personal representative. *See id.* § 159.005(a)(5). Any subsequent release of medical records must be consistent with the authorized purposes for which the records were first obtained. *See id.* § 159.002(c); 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 state that the department received the submitted medical documents and information pursuant to section 159.004(1) of the Occupations Code, which provides in part, "[a]n exception to the privilege of confidentiality . . . , allowing disclosure of confidential information by a physician, exists only with respect to the following: (1) a governmental agency, if the disclosure is required or authorized by law." Occ. Code § 159.004(1). You also state that the information you have marked as confidential under section 159.002 consists of either copies of actual medical records, information obtained from medical records, or physician/patient communications. After reviewing your arguments and the submitted information, we agree that the information you have marked as confidential under section 159.002 may be released only in accordance with the MPA.

Section 773.095 of the Health and Safety Code provides as follows:

- (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services trauma systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.
- (b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.
- (c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Based on your representations and our review of the submitted information, we find that the information you have marked as confidential under section 773.095 constitutes records of a hospital committee relating to the proceedings and records of organized committees of

hospitals, medical societies, emergency medical services providers, emergency medical services trauma systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, or emergency medical services personnel. Thus, this information is confidential pursuant to section 773.095 and must be withheld under section 552.101 of the Government Code.

Next, you assert that the remaining information consists of Emergency Medical Service (“EMS”) patient records that are protected from disclosure under section 773.091 of the Health and Safety Code. Section 773.091 provides in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

We note that this confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” Health & Safety Code § 773.091(g). Section 773.093(c) also requires that any subsequent release of the EMS records be consistent with the purposes for which the governmental body obtained the records. After review, we agree that some of the submitted information constitutes EMS records. Thus, with the exception of the information described in section 773.091(g) which must be released, we conclude that the department may only release the marked EMS records as outlined in section 773.093 of the Health and Safety Code.

Next, you contend that a portion of the submitted information is confidential under section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Thus, we agree that, pursuant to this section, the department must withhold the bank account and routing number we have marked.

Finally, you assert that the e-mail addresses you have marked are confidential under section 552.137 of the Government Code. That section provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act (the “Act”)].” We note that section 552.137 does not apply to a government employee’s work e-mail address or a business’s general e-mail address or website address. You state that the department has not received affirmative consent for release from any

members of the public regarding release of their e-mail addresses. Therefore, the department must withhold the e-mail addresses that it has marked. *See* Gov't Code § 552.137(b).<sup>1</sup>

To summarize, we conclude that: (1) the information you have marked as confidential under section 159.002 of the Health and Safety Code may be released only in accordance with the MPA, (2) the information you have marked pursuant to section 773.095 is confidential and must be withheld under section 552.101 of the Government Code, (3) with the exception of the information described in section 773.091(g) which must be released, the department may only release the marked EMS records as outlined in section 773.093 of the Health and Safety Code, (4) the department must withhold the bank account and routing number we have marked under section 552.136 of the Government Code, and (5) the department must withhold the marked e-mail addresses under section 552.137 of the Government Code. The remaining submitted information must be released to the requestor.

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).

---

<sup>1</sup>As we are able to make this determination, we need not address your remaining argument.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 186483

Enc. Submitted documents

c: Ms. Karen J. Philen  
The Edwards Law Firm, L.L.P.  
P. O. Box 480  
Corpus Christi, Texas 78403-0480  
(w/o enclosures)