



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 20, 2008

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

Ms. Carol Longoria  
The University of Texas System  
Office of the General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2008-02345

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 301431.

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for fourteen categories of information related to the Special Assistance Office. You state you do not have information responsive to several of the requested categories of information.<sup>1</sup> You also state you have provided, or will provide, the requestor with a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.1235 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.<sup>2</sup> We have also considered comments submitted by the requestor's

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We 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 Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

attorney. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA governs the public availability of medical records. Section 159.002 of the MPA 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.

Occ. Code § 159.002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

You claim the submitted information is confidential under the MPA. You state that the submitted information consists of: e-mails discussing patient diagnoses and treatments; a list of patients who have outstanding self-pay balances; and a list of individuals who are patients and/or financial donors, and their family members. You state that the e-mails "contain information that appears in and is taken from patient medical records created by physicians and/or individuals under the supervision of physicians." You further state that the information in the e-mails pertains to the diagnosis, evaluation, and/or treatment of patients. Based on these representations and our review, we find that a portion of the information contained in the submitted e-mails relates to diagnosis and treatment information that was taken from medical records. Thus, the MPA is applicable to this information, which we have

marked, and it may only be disclosed in accordance with the MPA. However, we find that you have failed to demonstrate how the remaining information constitutes medical records pertaining to the diagnosis, evaluation, or treatment of a patient for the purposes of the MPA. We therefore conclude that the university may not withhold any of the remaining information on the basis of the MPA.

Section 552.101 also encompasses the doctrines of common-law and constitutional 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we determine that the submitted e-mails contain information protected by common-law privacy. Accordingly, the university must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Although you assert the names of the patients and the family members in the remaining information are also private, we find, however, that patient names and family members are not intimate or embarrassing. Therefore, the patient names and the family members may not be withheld under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Again, you claim the patient names and their family members are private. However, you have not demonstrated how the names or family members fall within the zones of privacy or implicate an individual's privacy interests for purposes of constitutional privacy. Thus, the patient names and family members may not be withheld under section 552.101 in conjunction with constitutional privacy.

Next, we address your claim under section 552.1235 of the Government Code, which excepts from disclosure "the name or other information that would tend to disclose the identity of a

person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). We note that this section does not except from disclosure the amount or value of an individual gift, grant, or donation. *See id.* § 552.1235(b). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section. *See Educ. Code* § 61.003.

You seek to withhold the information identifying financial donors under section 552.1235. You state that these donors have not granted the university permission to reveal their identities. Based on your representations and our review, we conclude that the university must withhold the information you have marked pursuant to section 552.1235 of the Government Code.

We note that the submitted e-mails contain information subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). Therefore, the university must withhold the e-mail addresses we have marked in accordance with section 552.137 unless the university receives consent for their release.

In summary, the university may only release the information we have marked in the submitted e-mails in accordance with the MPA. The university must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the information you have marked under section 552.1235. The e-mail addresses we have marked must be withheld under section 552.137 unless the university receives consent for their release. 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 file suit in

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJC/jb

Ref: ID# 301431

Enc. Submitted documents

c: Ms. Katie Fairbank  
*Dallas Morning News*  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)

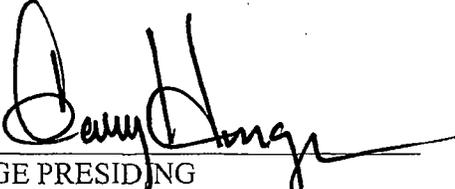


Regarding Attorney General open records letter ruling OR2008-02349, Plaintiffs timely filed this cause of action to challenge OR2008-02349. The requestor has voluntarily withdrawn his request for information.

**IT IS THEREFORE ORDERED** that:

1. Because the request relating to OR2008-02345 has been abandoned, no further information should be released in reliance on Letter Ruling OR2008-02345. Letter Ruling OR2008-02345 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Texas Government Code § 552.301(f).
2. Because the request relating to OR2008-02349 has been voluntarily withdrawn by the requestor, no further information should be released in reliance on Letter Ruling OR2008-02349. Letter Ruling OR2008-02349 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Texas Government Code § 552.301(f).
3. All costs of court are taxed against the party incurring same.
4. This cause is hereby DISMISSED without prejudice pursuant to Tex. Govt. Code §552.327 because the requestor relating to OR2008-02345 has abandoned the request, and the requestor relating to OR2008-02349 has voluntarily withdrawn the request.

SIGNED on Nov. 21, 2016.

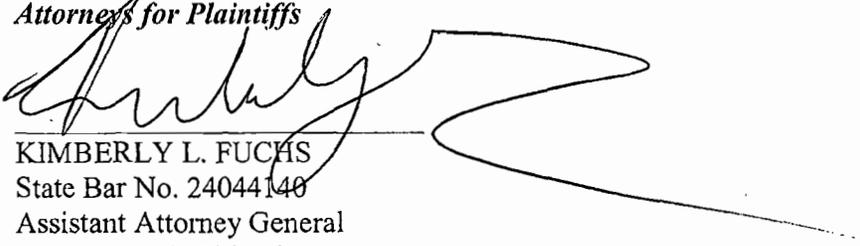
  
JUDGE PRESIDING

AGREED:

  
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A large, stylized handwritten signature in black ink, appearing to read 'Kimberly L. Fuchs', is written over the printed name and extends across the middle of the page.

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