



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-07688

Dear Ms. Chatterjee:

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# 380676 (OGC # 129343).

The University of Texas Medical Branch at Galveston (the "university") received a request for all hospital liens filed during a specified time period.¹ You claim that some of the submitted information is not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, we address your argument that portions of the submitted information are not subject to the Act. You contend that, pursuant to section 181.006 of the Health and Safety Code, the

¹The university sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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.

information you have marked is not subject to the Act. Section 181.006 states that: [f]or a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Subsection 181.006(2) does not remove protected health information from the Act's application, but rather states this information is "not public information and is not subject to disclosure under [the Act]." We interpret this to mean a covered entity's protected health information is subject to the Act's application. Furthermore, this statute, when demonstrated to be applicable, makes confidential the information it covers. Thus, we will consider whether section 181.006 makes this information confidential.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 181.006. As noted above, section 181.006 states that "[f]or a covered entity that is a governmental unit, an individual's protected health information . . . is not public information and is not subject to disclosure under [the Act]." Health & Safety Code § 181.006. Section 181.001(b)(2) defines "[c]overed entity," in part, as "any person who:

- (A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2). You inform us that the university operates a hospital and clinics which collect, use, and store information regarding individuals' medical history, information about the issue for which an individual is receiving care, and information regarding the treatment provided to an individual. You assert that the information collected, used, and stored by the university's hospital and clinics consists of protected health information. Thus, you claim the university is a covered entity for the purposes of section 181.006 of the Health and Safety Code.

In order to determine whether the university is a covered entity for the purposes of section 181.006 of the Health and Safety Code, we must address whether the university engages in the practice of collecting, analyzing, using, evaluating, storing or transmitting protected health information. Section 181.001 states that “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [“HIPAA”].” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. *See* 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; *or the past, present, or future payment for the provision of health care to an individual*; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual[.]

45 C.F.R. § 160.103 (emphasis added). The term “payment,” for the purposes of “individually identifiable health information,” means in relevant part:

(1) The activities undertaken by:

...

(ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and

(2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to:

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing[.]

45 C.F.R. § 164.501. The information at issue concerns hospital liens filed for payment of charges incurred as a result of the treatment of certain parties' injuries at a hospital. You indicate, and the submitted documents reflect, that the hospital liens were claimed by the university under chapter 55 of the Property Code to obtain payment for treatment performed at a university hospital. *See* Prop. Code § 55.001 *et seq.* We note that the information at issue identifies the individuals who were treated at the hospital. Accordingly, we conclude that the hospital liens contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the hospital liens contain protected health information for the purpose of section 181.006 of the Health and Safety Code. You inform us, and the submitted information reflects, that the liens are collected, used, and stored by the university. Therefore, with respect to the information at issue, the university is a health care entity that is in the practice of collecting, using, and storing protected health information, and, consequently, it is a covered entity for purposes of section 181.006 of the Health and Safety Code. Accordingly, the university must withhold the protected health information we have marked in the submitted documents under section 181.006 of the Health and Safety Code in conjunction with section 552.101 of the Government Code. We find, however, that you have not established that the remaining information you have marked under this exception serves to identify any individual and, thus, may not be withheld under section 181.006 of the Health and Safety Code.

You claim that a portion of the remaining information is excepted from disclosure under common-law and constitutional privacy. Common-law and constitutional privacy are also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found the following types of information are excepted from required public disclosure under common-law privacy: 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) and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600, 545 (1990).

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)).

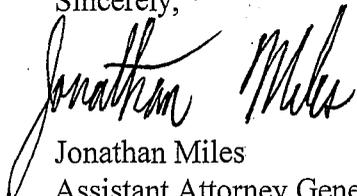
Upon review, we find you have failed to demonstrate that any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code on the basis of common-law privacy. Further, you have not demonstrated how any of the remaining information at issue falls within the zones of privacy or implicates privacy interests for purposes of constitutional privacy. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 380676

Enc. Submitted documents

c: Requestor
(w/o enclosures)