



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Ms. Zeena Angadicheril
Attorney
The University of Texas System
Office of General Counsel
201 West 7th Street
Austin, Texas 78701-2902

OR2010-16955

Dear Ms. Angadicheril :

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# 401792 (OGC# 133371).

The University of Texas Medical Branch at Galveston (the "university") received a request for five categories of information relating to the treatment of Brazoria County inmates and detainees, including one detainee in particular, and the written records of a named individual relating to the requestor's client. You state the university will release some of the information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your argument that the submitted information is not subject to the Act. You contend that, pursuant to section 181.006 of the Health and Safety Code, the information you have submitted is not subject to the Act. Section 181.006 states: [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 excepts 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, "[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 state the university operates a hospital and clinics in which inmates and detainees held by various law enforcement agencies receive health care-related services. You state the university collects and stores information for the individuals it serves, including information related to the services provided, individual health conditions, and treatment information. You assert the information collected, used, and stored by the university constitutes 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, "[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

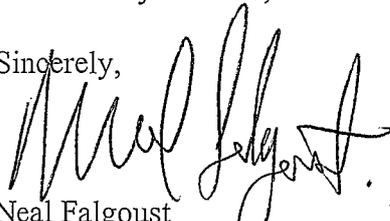
- (i) That identifies the individual; or
- (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual[.]

45 C.F.R. § 160.103. The information at issue is a patient record pertaining to an inmate who received treatment at one of the university's facilities. Upon review, we find the submitted information constitutes protected health information for the purpose of section 181.006 of the Health and Safety Code. You further state the university collects and stores this information for the purposes of providing health care-related services. 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, is a covered entity for the purposes of section 181.006 of the Health and Safety Code. Accordingly, the university must withhold the submitted information under section 181.006 of the Health and Safety Code in conjunction with section 552.101 of the Government Code.¹

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

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¹As this ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 401792

Enc. Submitted documents

c: Requestor
(w/o enclosures)