



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2010

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2010-19156

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# 403500 (OGC ID# 133626).

The University of Texas Medical Branch at Galveston (the "university") received a request for all documents from a specified time period relating to ingestion injuries from a specified cause. You state the submitted information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. Further, you assert the information at issue may implicate the interests of third parties. Accordingly, the university states, and submits documentation showing, that the university notified the Texas Department of State Health Services and the Commission on State Emergency Communications ("CSEC") of the request for information and of their right to submit arguments to this office as to why its submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the CSEC. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We 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

Initially, you contend that, pursuant to section 181.006 of the Health and Safety Code, the submitted information 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 your arguments for this information.

Next, the CSEC asserts that the submitted information is commercially available. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The CSEC asserts that the information at issue may be ordered from the website of the American Association of Poison Control Centers ("AAPCC"), which has a database of information provided by poison control centers around the country and, thus, the

office.

university should not have to release the submitted information. However, you have not demonstrated how the submitted information consists of information in a publication that was purchased or acquired by the university for research purposes. Rather, the information at issue was created by the university and subsequently obtained by the AAPCC for inclusion in its database. Accordingly, we determine the submitted information is not subject to section 552.027 and it may not be withheld on that basis.

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 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 the university operates a poison control center that maintains health information for the individuals it serves, including information showing that an individual received medical care. You assert the information collected, used, and stored by the university 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 assembling, 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[.]

Id. HIPAA defines “health care provider” as a person or organization who furnishes, bills, or is paid for health care in the normal course of business. *Id.* Further, “health care” is defined as “care, services, or supplies related to the health of an individual.” *Id.* You state that the university “coordinates the poison control activities and provides educational and medical services to patients within its designated geographic region.” You further inform this office that “[a]s part of providing poison control-related health care to patients, [the university] collects and stores information for CSEC, including, but not limited to the patient’s medical history and information regarding the current issue for which the patient is receiving health care.” The information at issue consists of the university’s poison control center’s records that contain individually identifiable health information for purposes of section 160.103 of title 45 of the Code of Federal Regulations. Thus, the submitted records consist of protected health information for purposes of section 181.006 of the Health and Safety Code. Therefore, with respect to the information at issue, the university is a health care provider that is in the practice of assembling, collecting, using, storing, and transmitting protected health information and, consequently, 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 you have submitted under section 552.101 of the Government Code in conjunction with section 181.006 of the Health and Safety Code.²

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,

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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/eeg

Ref: ID# 403500

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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