



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2011

Ms. Kristi Ward  
Associate General Counsel  
UMC Health System  
602 Indiana Avenue  
Lubbock, Texas 79415

OR2011-13027

Dear Ms. Ward:

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# 429332.

The UMC Health System (the "system") received a request for information pertaining to the requestor's employment with the system. You state the system has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as section 241.152 of the Health and Safety Code, which states, in relevant part:

- (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines “health care information” as “information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.” *Id.* § 241.151(2). We agree that portions of the information at issue, which we have marked, consist of health care information that is confidential under section 241.152 of the Health and Safety Code. Accordingly, the system must withhold the health care information we have marked under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code. However, the remaining information does not relate to the history, diagnosis, treatment, or prognosis of an identified patient, thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which is applicable to information relating to the provision of emergency medical services (“EMS”). Section 773.091 provides, in pertinent 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.

Health & Safety Code § 773.091(b). Upon review we find none of the remaining information constitutes EMS records created or maintained by an EMS provider or physician documenting emergency medical service provided to a patient. As such, the system may not withhold any of the remaining information on this basis.

Section 552.101 of the Government Code also encompasses medical records made confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part:

(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.

Occ. Code § 159.002(b). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined 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). Upon review, we find none of the remaining information constitutes a medical record for the purposes of the MPA; thus, the system may not withhold any of the remaining information on this basis.

You also raise common-law privacy for the remaining information. Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 established. *Id.* at 681-82. The type of information considered intimate or 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *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 find portions of the remaining information are highly intimate or embarrassing and not of legitimate public concern. However, we note the requestor is the individual whose privacy rights are implicated. Thus, the requestor has a special right of access to her own information that would ordinarily be withheld to protect the individual's privacy interests. *See* Gov't Code § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the system may not withhold the information that implicates the requestor's privacy rights under section 552.101 of the Government Code in conjunction with common-law privacy.

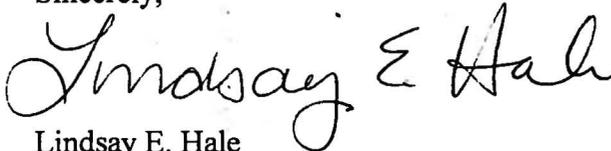
As to the remaining information that does not implicate the privacy rights of the requestor, we find you have failed to establish that any of this information either pertains to any identified individual or is highly intimate or embarrassing and not of legitimate concern to the public. Consequently, none of the remaining information at issue is confidential under common-law privacy, and the system may not withhold it under section 552.101 on that ground.

In summary, the system must withhold the health care information we have marked under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code. The system must release the remaining information.<sup>1</sup>

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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/bs

Ref: ID# 429332

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>Because the requestor has a right of access under section 552.023 of the Government Code to some of the information being released, if the system receives another request for this information from an individual other than this requestor, the system must again seek a ruling from this office. See Gov't Code § 552.023(a).