



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2011

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

OR2011-13166

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# 430481 (OGC# 138358).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for all digital photographs of a named individual. You state you are releasing some of the requested information. You claim the submitted information is not subject to the Act. Alternatively, you claim that 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 assertion that pursuant to section 181.006 of the Health and Safety Code, the submitted information is not subject to the Act. Section 181.006 provides in part 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(2). We will assume, without deciding, that the university is a covered entity. Section 181.006(2) does not remove protected health information from the Act's application, but rather states that such information is "not public information and is not subject to disclosure under [the Act]." *Id.* We interpret this language to mean that a covered entity's protected health information is subject to the Act's application. Furthermore, section 181.006, when demonstrated to be applicable, makes confidential information it covers. Thus, we will consider your arguments for 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. *See id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You inform us the submitted photographs contain depictions of a patient of the university. Upon review, we agree that the submitted information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 430481

Enc. Submitted documents

c: Requestor
(w/o enclosures)