



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2012

Ms. Jennafer G. Tallant
Denton, Navarro, Rocha & Bernal P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2012-02694

Dear Ms. Tallant:

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# 445870.

The Dallas County Hospital District d/b/a Parkland Health and Hospital System (the "district"), which you represent, received a request for all legal agreements related to a named individual. You claim the requested 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. We have also considered comments submitted by the individual whose information is at issue. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim the submitted information is protected under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002).

These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a). This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We, therefore, held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the district may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code encompasses information protected by other statutes, including the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(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.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Upon review, we find you have not established the submitted information, which consists of a financial settlement agreement between the district and the named individual, is a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician. *See id.* § 159.002(b). Thus, the submitted information is not confidential under the MPA, and the district may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses section 181.006 of the Health and Safety Code, which provides, “For 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 Chapter 552, Government Code.” Health & Safety Code § 181.006. You contend a portion of the submitted information consists of protected health information pertaining to the individual at issue that is subject to section 181.006, and which must be withheld from the requestor under section 552.101 on this basis. However, we note that section 181.006 is located in chapter 181 of the Health and Safety Code, which is entitled “Medical Records Privacy[.]” *See id.* § 181.001-181.205. We further note that chapter 181 authorizes the commissioner of the Texas Health and Human Services Commission to make certain determinations under the law with consideration of “the beneficial and adverse effects . . . on: (1) the lives of individuals in this state and their expectations of privacy[.]” *See id.* § 181.005. Accordingly, we conclude section 181.006 is intended to protect the privacy interests of the subject of protected health information, but does not protect any other interests. *Cf.* Open Records Decision No. 577 (1990) (provisions of Communicable Disease Prevention and Control Act limiting release of medical or epidemiological information are designed solely to protect individual privacy), 565 (1990) (provisions of Medical Practices Act making medical records confidential are intended to protect more than just the privacy interests of the patient). In correspondence to this office, the individual whose information is at issue informs us she has authorized the district to provide the requestor all information related to the individual’s care and its costs, and has submitted to this office a detailed authorization to release. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person’s representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov’t Code § 552.023(a). Thus, because the individual at issue has authorized the district to release her private information to the requestor, we conclude the district may not withhold the submitted information under section 552.101 in conjunction with section 181.006. *See id.*

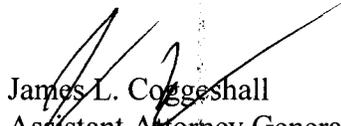
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. You assert information pertaining to the individual whose information is at issue is confidential under common-law privacy. However, as noted above, the requestor has a right of access to this individual’s private information pursuant to section 552.023 of the Government Code. Therefore, the district may not withhold any of the submitted

information under section 552.101. Instead, the district must release the submitted information to the requestor.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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 445870

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Jessie Mae Ned
2703 Downing Avenue
Dallas, Texas 75216
(w/o enclosures)

¹Because the requestor has a special right of access to the information being released, the district must again seek a decision from this office if it receives another request for the same information from another requestor.