



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

November 28, 1994

Ms. Lan P. Nguyen
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-757

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29831.

The City of Houston (the "city") received a request for medical records under the Medical Liability and Insurance Improvement Act, V.T.C.S. art. 4590i, (the "act"). Pursuant to that statute, an attorney has submitted a request for (1) her client's medical chart and (2) itemized billing statements for her client's medical treatment. The requestor also gave notice under the act that her client is making a medical malpractice claim against the doctor and the treatment facility. You contend that the requested information is excepted from disclosure under section 552.103(a) of the Government Code.

For information to be excepted from disclosure under section 552.103(a), a governmental body must demonstrate that the information "relates" to a pending or reasonably anticipated judicial proceeding. Open Records Decision No. 551 (1990). You have submitted to this office for review records that are responsive to the request. These records include the patient's medical records, access to which is governed by provisions outside the Texas Open Records Act. However, section 552.103(a) is not applicable in this situation because access to this information is governed by statutory provisions outside the Open Records Act.

In Open Records Decision No. 598 (1991), as in this situation, the city received a notice of claim under section 4.01 of the act, which provides for the release of medical records:

(a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this Act have been met.

....

(d) *All parties shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within 10 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization executed by the claimant herein shall be considered compliance by the claimant with this section. [Emphasis added.]*

As discussed in Open Records Decision No. 598, the Medical Practice Act, article 4495b, V.T.C.S., provides both for the confidentiality of “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician” and for access to these medical records.¹ V.T.C.S. art. 4495b, § 5.08(b). We determined that when access to records is governed by provisions outside of the Texas Open Records Act “exceptions to the Open Records Act are not applicable to their release.” Open Records Decision No. 598 at 1. Since access to the medical records at issue is governed by law other than Government Code chapter 552, section 552.103(a) is not applicable.

¹Section 5.08(b) provides that:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

The exceptions to this confidentiality requirement include when suit is brought against the physician for malpractice; in civil litigation for recovery on behalf of the patient; and pursuant to written consent. V.T.C.S. art. 4495b, § 5.08(g), (j), (k).

You also submitted to this office documents that do not appear to be medical records, such as application and eligibility forms for the requestor's client and the client's payment record. A review of these records shows that these also may not be withheld from disclosure under section 552.103(a). The requestor's client, the opposing party in the anticipated litigation, appears to have already seen or had access to these other records. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). These records must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MRC/rho

Ref.: ID# 29831

Enclosures: Submitted documents

cc: Ms. Pamela J. Franklin
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(w/o enclosures)