



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1994

Mr. Gregory D. Humbach  
City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR94-031

Dear Mr. Humbach:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 21590.

The City of Wichita Falls (the "city") has received a request for the following information:

a computer print out of all checks issued by the Employee Benefits Trust from January 1, 1991 through June 1, 1993. The information needed on this print out is the check number, date, payee, amount, employee or dependent charged and any other information not deemed confidential and private.

You have submitted to this office for review the computer print-outs that contain the requested information. You seek to withhold these records pursuant to section 552.101

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<sup>1</sup>The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(former section 3(a)(1)) of the Open Records Act.<sup>2</sup> Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that:

revealing a patient's name would violate their common law right of privacy. You should be advised that disclosing both the payee and the name of the patient would reveal which employees and/or dependents are receiving treatment for mental health illnesses or drug and/or alcohol abuse problems. These employees and their dependents have been assured confidentiality under the City's Employee Assistance Program in exchange for them acknowledging their problem and voluntarily seeking treatment.<sup>3</sup> We further believe that providing the requested information would violate the Texas Medical Practice Act, Article 4495b, V.A.C.S. (Footnote added.)

We initially note the city did not request an open records decision from this office within ten days of its receipt of the open records request. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). However, this presumption of openness is overcome where the information is made confidential by other law or where third party interests are at stake. Open Records Decision No. 150 (1977). Consequently, the city may withhold the requested records to the extent that they come under the protection of section 552.101.

We now address your section 552.101 claims. The Texas Medical Practice Act, V.T.C.S. article 4495b, provides in pertinent part:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician *that are created or maintained by a physician*

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<sup>2</sup>We note that the requestor is a city council member, and that therefore, to the extent he seeks the records in his official capacity, he has an inherent right of access to these records. See generally Attorney General Opinion JM-119 (1983); Letter Opinion No. 93-69 (1993) (copies enclosed). Because you seek to withhold the requested information under the Open Records Act, however, we assume that you have determined that the requestor does not seek the records in his official capacity but rather as a member of the general public. This ruling addresses the availability of the requested records to members of the general public under the act; it does not address, and should not be construed in any way to limit, the requestor's right of access to records in his official capacity.

<sup>3</sup>These individuals' identities may not be withheld merely because they expected the city to keep their names confidential. See *Industrial Found. of the S. v. Texas Indust. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Furthermore, a governmental body may not make an enforceable promise to keep information confidential unless it is specifically authorized by law to do so. Open Records Decision No. 585 (1991).

are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b) (emphasis added). The records at issue are neither created nor maintained by a physician and thus clearly are not the type of records made confidential under section 5.08(b). Consequently, the city may not withhold these records from the public pursuant to the Medical Practice Act.

In *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court addressed whether certain information contained in workers' compensation files was protected by the doctrine of common-law privacy, as incorporated in former section 3(a)(1) of the Open Records Act. It held that common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found.*, at 683-85. The court also held that:

there is nothing intimate or embarrassing about the fact, in and of itself, that an individual has filed a claim for [workmens' compensation] benefits. The claimant's name may therefore normally be disclosed, as may other information in the claimant's file which does not itself reveal private facts, even though information concerning the nature of his injury is withheld.

*Industrial Found.*, at 686. Similarly, we believe that the names of those individuals who have been reimbursed for their medical expenses or who have arranged to have those expenses paid directly to their health care provider are not protected by common-law privacy and thus must be released.

However, the requested records reveal in many instances the particular health care providers patients have chosen to attend to their medical needs. This information implicates the privacy interests of the patients because it reflects a personal financial and medical decision that is both highly intimate and of no legitimate concern to the public. *Cf.* Open Records Decision No. 545 (1990). Consequently, the city must withhold the names of the payees to the extent that the release of this information would reveal a patient's personal decision to utilize the services of a particular health care provider. On the other hand, where the payee is the patient who is being reimbursed for medical expenses, such privacy interests are not implicated, and this information must be released.<sup>4</sup>

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<sup>4</sup>The withholding of the names of the health care providers will necessarily protect the fact that a particular individual is receiving treatment for mental health illness or drug and/or alcohol abuse.

In summary, the city may withhold from the public those portions of the requested records that reveal the names of particular health care providers. All remaining information contained in these records must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this 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,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/RWP/rho

Ref.: ID# 21590  
ID# 22144  
ID# 22406

Enclosures: Attorney General Opinion JM-119  
Letter Opinion No. 93-69  
Submitted documents

cc: Mr. Terry Loughry  
C/o City Manager's Office  
P.O. Box 1431  
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(w/ enclosures: JM-119, LO No. 93-69)