



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1994

Mr. David Hiserote
Jail Administrator
Collin County
Office of the Sheriff
McKinney, Texas 75069

OR94-286

Dear Mr. Hiserote:

You ask 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# 24972.

The Sheriff of Collin County received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You say that you anticipate litigation because you say that "inmate Marcom has advised my staff of his intent to file civil litigation against this office."

We conclude that you have not made the requisite showing that litigation is reasonably anticipated for purposes of section 552.103(a). Before we may conclude that this exception applies, we must be shown concrete evidence that the claim that litigation may ensue is more than mere conjecture. See Open Records Decision No. 328 (1982). In this instance, you have provided no such evidence. The mere threat of litigation does not substantiate a claim that litigation is reasonably anticipated under section 552.103(a). Open Records Decision No. 331 (1982) at 1. Thus, you may not withhold the requested records based on section 552.103(a) of the Government Code.

However, we note that the information at issue contains medical records, including lab test reports, notes prepared by a nurse, and a report signed by a physician. Access to medical records created by or under the supervision of a physician or

maintained by a physician is governed by the Medical Practice Act, V.T.C.S. article 4495b, rather than the Open Records Act. *See* Open Records Decision No. 598 (1991).

Section 5.08(b) of the Medical Practice Act provides:

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.

V.T.C.S. art. 4495b, § 5.08(b). Thus, generally medical records created by or under the supervision of a physician or maintained by a physician are excepted from disclosure under section 5.08(b) of the Medical Practice Act. *See* Open Records Decision No. 600 (1992) at 7. A patient may, however, consent to the release of his own medical records. *See* V.T.C.S. art. 4495b, § 5.08(h)(5), (j), (k). A physician must furnish copies of requested medical records when provided a valid consent for their release, unless certain stipulations are not met. *Id.* § 5.08(k). The requestor here submitted a consent for the release of information signed by the patient.

To be valid, a patient's consent must comply with subsection (j) of section 5.08 of the Medical Practice Act. *See* Open Records Decision No. 546 (1990). Section 5.08(j)(1) sets forth the requirements for consent to the release of medical records as follows:

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient . . . provided that the written consent specifies the following:

- (A) the information or medical records to be covered by the release;
- (B) the reasons or purposes for the release; and
- (C) the person to whom the information is to be released.

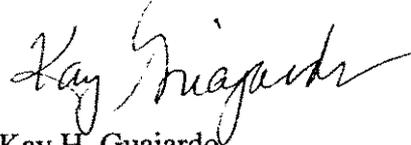
The consent at issue here does not satisfy the requirement of subsection (j)(1)(B), in that it fails to state the reasons or purposes for the release. Since the consent is not in compliance with section 5.08(j) of the Medical Practice Act, the requested medical records may not be released pursuant to section 5.08(h)(5) of the Medical Practice Act.¹

¹Under subsection (k), the physician under whose direction the records are maintained may withhold copies of medical records to a patient who consents to such release in accordance with subsection (j) of section 5.08 of the Medical Practice Act if the physician concludes that release of the records "would be harmful to the physical, mental, or emotional health of the patient." Since we determined that the

Thus, all information made confidential by section 5.08(b) of the Medical Practice Act must be withheld. *See id.* You must release the remainder of the information. We have marked the documents accordingly.

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,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 24972

Enclosures: Submitted documents

cc: Mr. Timothy B. Garrigan
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(w/o enclosures)

(Footnote continued)

consent for the release of the medical information here is not valid under section 5.08(j)(1)(B) of the Medical Practice Act, we need not address subsection (k).