



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1995

Mr. Richard Ybarra
Open Records Coordinator
General Counsel Division
The Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1135

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36075.

The Office of the Attorney General (the "attorney general") received an open records request for "copies of any documents in [the attorney general's] files pertaining to an investigation into Colonial Hills Hospital, during the AG's office NME/PIA hospital investigations earlier this decade." You inform us that you have released some of the requested information. You contend that portions of the requested information are excepted from required public disclosure pursuant to Government Code sections 552.101, in conjunction with common-law privacy and other statutory confidentiality provisions, 552.108, and 552.107. You have submitted for our review the information that you contend you may withhold from disclosure. You submit this information in envelopes labeled A through F. We address separately the information submitted in each envelope. We note that portions of the documents submitted are not responsive to the request. We address only those portions of the information submitted that relate to the request for information about the investigation into Colonial Hills Hospital.

Envelope A

Envelope A contains information that you have marked as A1 through A4. You contend that all patient names and their identification numbers are protected by common-law privacy and may be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 552.101 in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. We conclude that you may withhold the patient names and identifying numbers on all documents contained in Envelope A pursuant to section 552.101.

With respect to the document marked A2, you contend that the column reflecting the length of each patient's stay at Colonial Hills is protected by common-law privacy and must be withheld pursuant to section 552.101. We conclude that since the patients' names are protected from disclosure, the length of each deidentified patient's stay no longer reflects identifying information about a patient. Consequently, you may not withhold the column showing the length of each patient's stay at Colonial Hills pursuant to section 552.101. This information must be released to the requestor.

On documents marked A3 and A4 you have marked information that you contend is protected by common-law privacy. Only the portions of the documents that identify the individuals is protected by common-law privacy. Consequently, of these documents, you may withhold only the identifying information from disclosure pursuant to section 552.101. You must release the remainder of the information contained in documents A3 and A4.

Envelope B

You contend that the information contained in the documents submitted in Envelope B is excepted in its entirety from required public disclosure pursuant to section 552.108 of the Government Code. Additionally, you contend that the patient names and their identifying numbers are protected by common-law privacy and are excepted from required disclosure pursuant to section 552.101. Under your 552.108 argument, you contend that the release of the information in Envelope B would reveal the attorney general's processes and analyses of the information that it acquires in its investigations of health care facilities.¹ When a governmental body claims section 552.108 as an exception for internal records it must reasonably explain, if the information does not supply an explanation on its face, how release would unduly interfere with future investigations. Open Records Decision No. 531 (1989) at 2 (citing *Ex Parte Pruitt*,

¹We assume, in this context, that the attorney general is a law enforcement agency for purposes of its arguments raised pursuant to section 552.108 regarding documents contained in Envelopes B, E, and F. Consequently, we do not reach the issues recently discussed in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 688 (Tex. 1995).

551 S.W.2d 706 (Tex. 1977)). Whether information falls within section 552.108 must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2. While you make the general assertion that disclosure of this information would reveal the attorney general's processes and analyses of the information, we conclude that you have not met your burden to show how this would occur. Consequently, you may not withhold the information in Envelope B pursuant to section 552.108. However, you may withhold portions of the documents in Envelope B that reveal patient names and their identification numbers pursuant to section 552.101 in conjunction with the patients' common-law privacy rights. The remainder of the information on the documents in Envelope B must be released.

Envelope C

You have submitted in Envelope C spreadsheets for which you claim portions are excepted from required public disclosure pursuant to sections 552.101 and 552.107. Once again, you contend that the names and patient identification numbers are protected by common-law privacy and are excepted from required disclosure pursuant to section 552.101. We agree that you must withhold the names and patient identification numbers pursuant to section 552.101. Additionally, you contend that the "status" field of the spreadsheet may be withheld from required public disclosure pursuant to section 552.107 of the Government Code. You contend that the status portion of the spreadsheet should be redacted because it reveals the recommendation by a representative of an assistant attorney general or the conclusion of a medical expert hired by the attorney general with respect to a particular claim. Section 552.107 excepts information if "it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. See Open Records Decision No. 574 (1990). After reviewing the status portion of the documents you submit in Envelope C, we conclude that these portions consist of the attorney general's advice and opinion. Consequently, pursuant to section 552.107, the status field may be withheld from required disclosure. The remainder of the documents in Envelope C must be released to the requestor.

Envelope D

On the document submitted in Envelope D, you have marked portions that you contend are protected by common-law privacy and must be withheld from disclosure pursuant to section 552.101. You have marked only the portions of the document that reveal the names and the patient identification numbers. As we have ruled on other documents you have submitted to this office accompanying this request, you must withhold these portions of the document pursuant to section 552.101 as they are protected by common-law privacy. You must release the remainder of the document.

Envelope E

Envelope E contains Sector One information relating to patients of Colonial Hills. Also included in this envelope are court documents. You contend that the documents in Envelope E are excepted from required disclosure pursuant to sections 552.101, 552.107, and 552.108.

You contend that because the investigation was conducted by the attorney general that the communications contained on Envelope E are attorney-client communications that are excepted from required disclosure pursuant to section 552.107. Additionally, you contend that the court documents in Envelope E might be the type of documents that would be sealed by a court and, consequently, would be excepted from required disclosure by section 552.107.

Section 552.107 provides that information is excepted from public disclosure if it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar or a court by order has prohibited disclosure of the information. The first portion of this section applies to protect information within the attorney-client privilege while the second portion applies to protect information that a court has ordered to be kept confidential. Under this section, a governmental body generally may withhold only information revealing client confidences or containing legal advice or opinion. Open Records Decision No. 462 (1987). When invoking this exception in its ruling request, the governmental body bears the burden of explaining how the particular information requested constitutes either a client confidence or a communication of legal advice or opinion protected under this section. *See, e.g.,* Open Records Decision No. 589 (1991). You have not shown how this portion of section 552.107 applies to the documents in Envelope E. Additionally, regarding the second portion of section 552.107, if the court documents are sealed by the court, then you may withhold them pursuant to section 552.107. As you acknowledge, however, if in fact these court documents are not sealed, then they must be released to the requestor since they would be publicly filed court documents and would not be excepted pursuant to section 552.107. Additionally, we note that if the court documents are not sealed, then the information contained in them is not protected by common-law privacy and they are also not excepted from required disclosure pursuant to section 552.101. *See Star Telegram v. Walker*, 836 S.W.2d 54 (Tex. 1992) (no privacy interest in court records).

Regarding the remaining documents in Envelope E, we note that many of the documents contain information that is protected by common-law privacy. We have deidentified the documents and you must release the remainder of the information.

Finally, regarding the information contained in Envelope E, you contend that section 552.108 excepts from required disclosure the remaining information. You state that the attorney general investigates and prosecutes psychiatric hospitals and health care facilities on an ongoing basis. You state, in a general manner, that to release these documents would impair pending and future investigations and litigation and would create a tremendous chilling effect on individuals who might have similar complaints regarding these types of facilities.

Generally, when a governmental body claims section 552.108 as an exception for internal records it must reasonably explain, if the information does not supply an explanation on its face, how release would unduly interfere with future investigations. Open Records Decision No. 531 (1989) at 2 (citing *Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within section 552.108 must be determined on a case-by-case basis. Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2. After reviewing these documents, we conclude that you have failed to show how the release of these documents would impair future investigations. Consequently, you may not withhold the remaining information in Envelope E pursuant to section 552.108, and you must release it to the requestor.

Envelope F

Envelope F contains a copy of one complaint of what you state are many that were filed with the attorney general regarding PIA. While you inform us that this complaint is one of several hundred that are the subject of another pending open records request, you do not state whether this is a representative sample of complaints against Colonial Hills or whether it is the sole complaint against Colonial Hills.² You contend that sections 552.101, 552.107, and 552.108 except these documents from required public disclosure. Additionally, you inform us that the litigation that resulted from the attorney general's investigation of Colonial Hills is now closed.

You contend that the documents submitted in Envelope F are excepted from required public disclosure pursuant to section 552.107. In reviewing the records contained in Envelope F we find no indication that the information submitted involves a communication between an attorney and its client. Consequently, you may not withhold any of the information submitted in Envelope F pursuant to section 552.107.

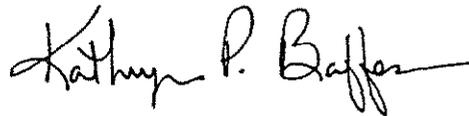
²To the extent that this is a "representative sample," in reaching our conclusion here, we assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You contend that the information contained in Envelope F is protected by common-law privacy and is excepted from required public disclosure pursuant to section 552.101 because the documents contain information about patients' mental health and medical treatment. In our review of the complaint submitted, we find no reference to any patient's medical treatment or mental health. Additionally, we find no information that would be excepted by section 552.101. Consequently, you may not withhold any of the information in Envelope F pursuant to section 552.101.

Finally, you contend that the information in Envelope F is excepted from required public disclosure pursuant to section 552.108 because its release may impair future investigations and litigation related to health care facilities and would create a chilling effect on individuals who might have similar complaints regarding these types of facilities. After reviewing these documents, we conclude that you have failed to show how the release of these documents would impair future investigations or litigation. *Consequently, you may not withhold the information in Envelope F pursuant to section 552.108.* We conclude that you must release all of the information in Envelope F to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 36075

Enclosures: Marked documents

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