



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 29, 1995

Mr. Michael D. Manno  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR95-1292

Dear Mr. Manno:

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# 36009.

The Texas Department of Agriculture (the "department") received a request for an investigative report relating to a pesticide application. You have provided a copy of the investigative report, and assert that the attached medical records and references to those records are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b. You also assert that section 552.107 of the Government Code excepts from disclosure information you claim is within the attorney client privilege.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.08<sup>1</sup> of the Medical Practice Act, V.T.C.S. art. 4495b, provides:

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a

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<sup>1</sup>The Seventy-fourth Legislature has amended section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b, effective September 1, 1995. See Act of May 28, 1995, ch. 856, §§ 4-7, 1995 Tex. Sess. Law Serv. 4290, 4293-95 (Vernon); Act of May 27, 1995, ch. 1039, § 71, 1995 Tex. Sess. Law Serv. 5145, 5169 (Vernon).

physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) 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.

In addition, section 5.08(j)(3) provides for further release of confidential medical record information obtained with a valid consent for release only if the disclosure "is consistent with the authorized purposes for which consent to release the information was obtained." *See also id.* § 5.08(c).

We have reviewed the information submitted to this office. Some of the documents are confidential under subsection (b) of section 5.08. Similarly, information in the file that has been extracted from the medical records may only be released in accordance with subsections (c) and (j)(3). The Medical Practice Act prohibits disclosure of the medical record information unless the department concludes that further release is authorized pursuant to subsections (c) or (j)(3). We agree that the information you have marked is subject to the provisions of the Medical Practice Act.

You also claim that one of the records submitted for our review is excepted from disclosure under section 552.107(1). 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) at 4-5.* We have marked the information that you may withhold under section 552.107(1). The remaining information must be released.

We are resolving this matter with an 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 should 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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

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Enclosures: Marked documents

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