



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1995

Mr. Thomas F. Keever  
Assistant District Attorney  
Chief, Civil Section  
Dallas County  
411 Elm Street  
Dallas, Texas 75202

OR95-1323

Dear Mr. Keever:

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# 34374.

Dallas County (the "county") received an open records request for information related to the county's health benefits consultants, Guy Benefits Consulting, Inc. and W.F. Corroon Corporation. You inform us that you have released some of the requested information to the requestor. You have submitted for our review documents labeled Exhibits A-J which you state are responsive to part three of the request that seeks "reports, studies, or other work products produced by Guy Benefits Consulting Inc. and/or W.F. Corroon Corporation." You state that, because of the volume of responsive documents, you have submitted these exhibits as a representative sampling of the records requested that you believe are excepted from required public disclosure by section 552.101 of the Government Code.

Regarding Exhibits A, B, C, and J, you do not urge any exception under chapter 552 of the Government Code that would preclude disclosure of these documents. Chapter 552 of the Government Code places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990), 532 (1989). If a governmental body does not establish how and why an exception applies to requested information, there is no basis upon which this office can pronounce it excepted from required public disclosure. Open Records Decision No. 363 (1983). Consequently, you must disclose Exhibits A, B, C, and J to the requestor.

Regarding Exhibits D through H, you contend that these documents are excepted from required public disclosure pursuant to section 552.101 of the Government Code because they contain medical information and the release of these records would constitute an invasion of privacy of the county employees to which these records relate.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

Our review indicates that some of the information contained in Exhibits D, E1, E2, F, G and H may be withheld on the basis of common-law privacy. *See* Open Records Decision Nos. 455 (1987), 343 (1982). We have marked the identifying information that may be withheld pursuant to section 552.101 based upon common-law privacy.

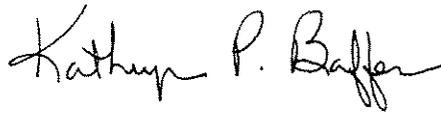
Regarding Exhibit I, we note that this document contains information showing county employees' choices of medical insurance carriers. This office has determined that such information is protected by common-law privacy pursuant to section 552.101. Open Records Decision No. 600 (1992) at 10. Consequently, you may withhold the identifying information which we have marked on Exhibit I.

Regarding Exhibits E3 through E9, these are medical records which are governed by the Medical Practice Act ("MPA"), V.T.C.S. article 4495b. Section 5.08(b) of the MPA provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision No. 343 (1982) at 1. Access to these records is governed by the MPA rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991) at 1; *see* Open Records Decision No. 565 (1990) (release of medical records). When access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. You may release these records only as provided under the MPA.

In reaching our conclusion, we assume that the "representative samples" 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

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/RHS/rho

Ref: ID# 34374

Enclosures: Marked documents

cc: Ms. P. J. Ward  
Producer/Researcher  
WFAA-TV 8  
Communications Center  
606 Young Street  
Dallas, Texas 75202  
(w/o enclosures)