



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 18, 1995

Ms. Esther L. Hajdar  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR95-1438

Dear Ms. Hajdar:

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# 37123.

The Texas Department of Agriculture (the "department") received a request for its file on Incident # 05-95-0044. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.101 and 552.103 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. You contend that information on pages 58, 79, 80, and 96 is made confidential by section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b. You contend that information on pages 52 and 99 is confidential under the common-law right to privacy.

We agree that the information on pages 52 and 99 is private information. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Furthermore, we believe the information you marked on page 96 is protected from required public disclosure under the common-law right to privacy. We do not believe the information on page 96 is covered by the Medical Practice Act confidentiality provision, section 5.08 of V.T.C.S. article 4495b, since the information there was obtained by interviewing the patient.

We also agree that section 5.08(c) of the Medical Practice Act makes confidential information on pages 58, 79 and 80 that refers to information in medical records. See Open Records Decision No. 565 (1990). We do not agree with your markings and have bracketed the information on those pages that the department must withhold from required public disclosure based on section 552.101 of the Government Code in conjunction with section 5.08(c) of the Medical Practice Act, V.T.C.S. article 4495b. Of

course, the department must also withhold from disclosure the medical records themselves. Gov't Code § 552.101; V.T.C.S. art. 4495b, § 5.08(b).

You assert that section 552.103 of the Government Code applies to pages 34 through 77 of the requested information. 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. 588 (1991). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). *See id.* The department may therefore withhold pages 34 through 77 from required public disclosure based on section 552.103 of the Government Code.<sup>1</sup>

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/ch

Ref.: ID# 37123

Enclosures: Marked documents

cc: Mr. Gerald E. Mann  
C & E Farms  
1201 South First Street  
McAllen Texas 78501  
(w/o enclosures)

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<sup>1</sup>We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).