



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 8, 1996

Ms. Priscilla A. Lozano
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR96-0001

Dear Ms. Lozano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37020.

The University of Texas at Brownsville received a request for, among other things, "doctor's excuses provided by absent employees for absences of three days or more, with appropriate University absentee forms." You contend that this information is excepted from required public disclosure under sections 552.101 and 552.102 of the Government Code.¹

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

- (a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

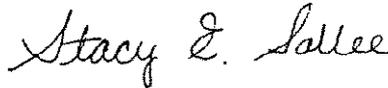
¹You state that the university has no objections to releasing the other information requested. However, you claim that the university is not required to create documentation or conduct polls in response to the request for information. We agree. The open records laws apply only to information in existence and do not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 558 (1990), 555 (1990), 534 (1989), 483 (1987), 430 (1985). Furthermore, the open records laws do not require a governmental body to answer factual questions, Open Records Decision Nos. 555 (1990), 379 (1983), or to perform legal research, Open Records Decision No. 563 (1990).

(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 records 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* V.T.C.S. art. 4495b, § 5.08(c). We have reviewed the information submitted to this office. We agree that the "doctor's excuses" are confidential and must be withheld under section 552.101 of the Government Code.² As we resolve your request under section 552.101, we need not address the applicability of section 552.102.

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

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/LBC/ch

Ref: ID# 37020

Enclosures: Submitted documents

cc: Mr. Jesse Arriola
(w/o enclosures)

²Access to records within V.T.C.S. article 4495b, section 5.08 is governed by the provisions of that statute. *See* V.T.C.S. art. 4495b, § 5.08(h), (j)(3); Open Records Decision No. 598 (1991).