



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

Ms. Veronica Cuadra
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0792

Dear Ms. Cuadra:

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# 30824.

The City of Dallas (the "city") received an open records request from an AFSCME representative for, among other things,¹ records reflecting "any Medical and Psychiatric services" received by a named city employee. You have submitted to this office as responsive to the request two documents that you contend are confidential under the Medical Practice Act, V.T.C.S. article 4495b, and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act provides in pertinent part:

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.

V.T.C.S. art. 4495b, § 5.08(b). We agree that the document entitled "Physician's Report" constitutes a confidential medical record for purposes of section 5.08(b). Further, none of the exceptions to nondisclosure listed in subsections (g) or (h) of section 5.08 appear to apply in this instance. *See also* V.T.C.S. art. 4495b, § 5.08(j) (procedural requirements

¹Because you have not requested a decision from this office with regard to any of the other requested documents, we assume that the city has released these other records to the requestor.

for patient's authorization of release of medical records). The city therefore may release the "Physician's Report" only as authorized by the Medical Practice Act.

The other document you seek to withhold, the "Applicant's Physical Statement For City Of Dallas Employment," presents different issues. Unlike the "Physician's Report," this record was not "created or maintained by a physician," but rather was created by the employee during the city's application process and is maintained by the city in the employee's personnel file. This statement is not a medical record for purposes of article 4495b.

This does not, however, end our discussion of the applicability of section 552.101. Section 552.101 also protects the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have marked the portions of section "3" of the statement form that the city must withhold under common law privacy. We have also marked the information the city must withhold in section "2" that identifies the employee's family member whose medical history is referenced. The remaining information in this form 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 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 Government Section

LRD/RWP/ch

Ref.: ID# 30824

Enclosures: Marked documents

cc: Mr. Michael Grant
AFSCME, Business Agent
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Fort Worth, Texas 76110
(w/o enclosures)