



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 17, 1996

Mr. Hugh W. Davis, Jr.  
Assistant City Attorney  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR96-1164

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100073.

The City of Fort Worth (the "city") received a request for all information in the personnel file of a city employee. You state that the city objects to releasing "any results of random drug testing." You, therefore, seek a decision from this office concerning the disclosure of the requested drug testing results only. You state that the requested information is excepted from required public disclosure under section 552.101 of the Government Code. You have submitted to this office the requested document you seek to withhold.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that article 4495b of Texas Civil Statutes (the "Medical Practice Act") protects the medical information at issue from disclosure. Section 5.08 of the Medical Practice Act provides, in part:

- (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.
- (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. [Emphasis added].

Information generated by a physician is excepted from disclosure by section 552.101 of the Government Code as information deemed confidential by statute, specifically section

5.08 of the Medical Practice Act. Attorney General Opinion MW-381 (1981). The document at issue here appears to be an evaluation created by a physician.

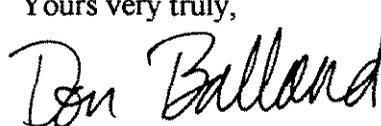
Section 5.08(c) of the Medical Practice Act provides as follows:

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(c) protects medical information in the hands of one who receives it. *See, e.g.,* Open Records Decision No. 507 (1988) at 3. The document at issue here is a medical record, access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The Medical Practice Act provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The drug testing result document, therefore, may only be released as provided by the Medical Practice Act.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 100073

Enclosures: Submitted documents

cc: Mr. Jack Z. Smith  
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(w/o enclosures)