



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 9, 1996

Mr. David R. Gipson
Assistant General Counsel
Texas Department of Agriculture
P. O. Box 12847
Austin, Texas 78711

OR96-1417

Dear Mr. Gipson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100076.

The Texas Department of Agriculture (the "department") received a request for complete copies of the investigative report in regard to incident number 05-95-065, involving Kathryn F. Stanford and the Texas Boll Weevil Eradication Program. You state that you have provided a copy of the investigative report to the requestor, with the exception of certain medical information that you redacted and records that you assert are excepted from disclosure pursuant to section 552.101 of the Government Code, in conjunction with section 5.08 of the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. You have submitted a copy of the medical records to this office. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 5.08 provides in pertinent 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.

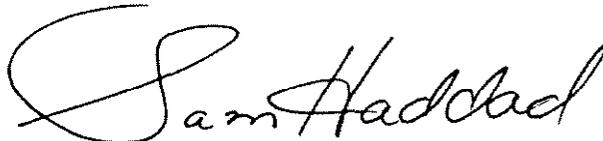
(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than persons . . . 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.

The MPA protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). Attorney General Opinion MW-381 (1981).¹ The documents submitted to this office include medical records access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. In accordance with section 5.08(c), the department cannot disclose the submitted records unless disclosure "is consistent with the authorized purposes for which the information was first obtained." Therefore, the medical records submitted to this office for review may only be released as provided by the MPA.

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,



Sam Haddad
Assistant Attorney General
Open Records Division

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¹Information "generated by a physician" is exempted from disclosure by section 552.101 of the Government Code as information deemed confidential by statute, specifically section 5.08 of the MPA. *Id.*

Ref.: ID# 100076

Enclosures: Submitted documents

cc: Mr. Phil R. Hopkins
Safety Officer/Risk Manager-Statewide
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(w/o enclosures)