



Office of the Attorney General
State of Texas

April 2, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Linda Wiegman
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-0683

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104685.

The Texas Department of Health (the "department") received a request for all documents regarding the inspection of two mental health facilities. You claim that the requested information is excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The department received the request for information on November 14, 1996. You did not seek a decision from this office until January 9, 1997. Consequently, you have not met your statutory burden. Gov't Code 552.301. You argue, however, that there are

compelling reasons to overcome the presumption of openness in this case. We will therefore consider your arguments.

You first contend that the information may be withheld under section 552.108 of the Government Code. You explain that there is a pending criminal investigation of the facilities in question by the U.S. Department of Health and Human Services. You have forwarded the requested information to the federal agency. You seek to withhold the information on behalf of the federal agency because of the investigation. Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure). This office informed you by facsimile dated March 13, 1997, that we required a representation from the federal agency that they wished to withhold the requested information and that the information related to a criminal investigation. As of the date of this letter, you have not provided this office with any response. We conclude, therefore, that the information may not be withheld pursuant to section 552.108 at this time. Gov't Code § 552.303.

You additionally assert that the identities of the patients named in the records may be withheld under a right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section generally provides a compelling demonstration to overcome the presumption of openness. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. After reviewing the material, we believe that you must withhold the identities and any identifying information concerning the patients under section 552.101. Open Records Decision No. 470 (1987).

Furthermore, section 552.101 encompasses information protected by other statutes. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, 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). Some of 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. The medical records submitted to this office for review may only be released as provided by the MPA.

In summary, with the exception of patient identities and protected medical records, the requested information 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 104685

Enclosures: Submitted documents

cc: Mr. David C. Weigle
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(w/o enclosures)

