



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 5, 1997

Mr. C. Robert Heath  
Bickerstaff, Heath, Smiley,  
Pollan, Kever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR97-1030

Dear Mr. Heath:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105349.

Collin County (the "county") received a request for the following information, for the years 1985 through 1991:

- (1) Total dollar amount paid out by the county in medical claims per female employee and/or female dependent of employee.
- (2) Access to any and all documents produced by any county employee reflecting information that includes, but is not limited to, medical procedures for which claims were paid by the county.

The requestor also asked for the amount of money in medical insurance claims paid per year in 1986, 1987, and 1988 for five named individuals, who are identified by the requestor as "employees/and or dependents of employees."

You state that the information requested "is no longer available in computer data banks and must be gathered by manual examination of computer printouts and similar records." The county submitted to this office several representative records, including medical claim forms, bills, doctor's statements, and other records.<sup>1</sup> Also submitted was a sample claims check register list for one day, showing all transactions by name of

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

employee, social security number, payee name, and check amount. You assert that these records are confidential pursuant to section 552.101 of the Government Code.<sup>2</sup>

Section 552.101 provides that information is excepted from disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Some of the records at issue are medical records made confidential by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, in conjunction with section 552.101 of the Government Code. Access to medical records is governed by provisions of the MPA rather than chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 5.08(b) and (c) provide:

(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 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(j)(3) provides that medical records may be released upon the written consent of a patient when the consent specifies: (1) records covered by the release, (2) reason or purpose for release, and (3) person to whom the information should be provided. Also, section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which the county obtained the records. Open Records Decision No. 565 (1990) at 7. As the requestor has not complied with the access provisions of the MPA, the county must withhold the marked medical records from disclosure.

We have also marked certain information from hospitals that this office has determined is confidential. See Health & Safety Code § 241.151 - .153.

The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). We agree that some of the information at issue is protected by common-law privacy and must be withheld from

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<sup>2</sup>We note that some of the records submitted to this office were not responsive to the request. These records included evaluations and general employment information concerning employees. We marked the records that were not responsive and those we were unable to read. This letter does not address those records.

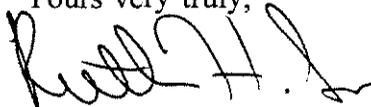
disclosure. Open Records Decision No. 423 (1984) at 2 (scope of public employee privacy is narrow). We have marked the information that is confidential under the doctrine of common-law privacy.

We note also that some of the information at issue may be confidential pursuant to sections 552.024 and 552.117 of the Government Code. Section 552.117 provides that information showing a peace officer's home address, home telephone number, social security number, and whether the peace officer has family members, is confidential and may not be disclosed. Sections 552.024 and 552.117 also provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members.

The requestor asked for information concerning dependents of employees. If any of the employees are peace officers, you may not provide information showing that they have dependent family members. You also must withhold this information if, as of the time of the request for the information, county employees or former employees had elected to keep this information private.<sup>3</sup> Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987).

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 may 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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 105349

Enclosures: Marked documents

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<sup>3</sup>We note that a social security number obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990 may also be confidential by federal law. 42 U.S.C. § 405(c)(2)(C)(viii); *see also* Open Records Decision No. 622 (1994).

cc: Ms. Michelle Mitchell  
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Allen, Texas 75013  
(w/o enclosures)