



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 12, 1997

Ms. Mary Barrow Nichols
General Counsel
Texas Workers' Compensation Insurance Fund
221 West 6th Street
Austin, Texas 78701

OR97-2038

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 108584.

The Texas Workers' Compensation Insurance Fund (the "fund") received a request for all documents concerning a named individual. You state that you will release most of the requested information. You claim, however, that some of the records are confidential and must be withheld under section 552.101 of the Government Code. We have considered the exception 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 Fund received the request for information on June 9, 1997. You did not seek a decision from this office until June 25, 1997. Consequently, you have not met your statutory burden. Gov't Code 552.301. The requested information is therefore presumed public. You argue, however, that several documents must be withheld because they are confidential medical records. *See* Gov't Code § 552.352 (the distribution of confidential information is

a criminal offense). We agree. 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). The documents submitted to this office are 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. You have provided a compelling demonstration that the information should not be made public. Open Records Decision No. 150 (1977). 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 108584

Enclosures: Submitted documents

cc: Ms. Rose C. Magallanes
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(w/o enclosures)