



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 9, 1997

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

OR97-2246

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110225.

The Texas Department of Health (the "department") received a request for information concerning certain complaints filed against the Methodist Hospital in Houston. You assert that portions of the requested information are made confidential by various state statutes or by the common-law right to privacy and therefore are excepted from required public disclosure under section 552.101 of the Government Code. Government Code section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. You have submitted the requested information to this office for review.

We observe that portions of the requested information consist of reports about the hospital's compliance with federal law as a Medicare provider. Federal regulations require the department to release the HCFA 2567, statements of deficiencies and plans of correction, provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 (1988) at 5. We have marked the documents that the department must release in accordance with federal regulations.

Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), applies to "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the

identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” The submitted information contains neither medical records and communications nor information obtained from those medical records and communications. Thus, you may not withhold the information under section 5.08 of V.T.C.S. article 4495b.

Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health and Safety Code § 611.001 (defining “patient” and “professional”). The submissions contain neither a professional’s records and communications nor information obtained from such records and communications. Thus, you may not withhold the information under section 611.002 of the Health and Safety Code.

Section 161.032 of the Health and Safety Code makes confidential the “records and proceedings of a medical committee.” Under section 161.031(a) of the Health and Safety Code, a “medical committee” includes any committee of a hospital, medical organization, or extended care facility. It includes an ad hoc committee appointed to conduct a specific investigation as well as a committee established under the bylaws or rules of the organization. Health & Safety Code § 161.031(b). While the records and proceedings of a medical committee are confidential, *id.* § 161.032(a), the confidentiality does not extend to “records made or maintained in the regular course of business by a hospital.” *Id.* § 161.032(c); Open Records Decision No. 591 (1991). Documents generated by a committee in order to conduct open and thorough review, as well as documents prepared by or at the direction of the committee for committee purposes, are confidential.

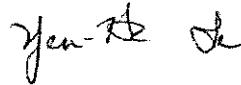
We believe some of the information is a record or proceeding of a medical committee made confidential by section 161.032 of the Health and Safety Code. *See Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977). Consequently, we have marked the information the department must withhold from the requestor.

Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found.of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* While common-law privacy may protect an individual’s medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). We find that the requested information is not protected from disclosure under the common-law right to privacy and must be released.

In summary, you must withhold some of the requested information, which we have marked, under section 161.032 of the Health and Safety Code. You must release the federal statements of deficiencies in accordance with sections 401.126 and 401.133 of title 42 of the Code of Federal Regulations. Finally, you must release the remainder of the information as it is not excepted by the exceptions you have raised.

We are resolving this matter with this 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 110225

Enclosures: Marked documents

cc: Mr. Paul Winters
4914 Spruce St.
Bellaire, Texas 77401
(w/o enclosures)

