



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 9, 1998

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

OR98-0651

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113048.

The Texas Department of Health (the "department") received a request "on Aubrey Eugene Brown III, RMT, of the Alpha Omega Clinic of Massage." In response to the request, you submitted to this office for review the information which you seek to withhold.<sup>1</sup> You contend that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

We first consider your claimed exception under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. In addition to statutory sources of privacy, section 552.101 incorporates the doctrine of common-law privacy.<sup>2</sup> Under the doctrine of common-law privacy, information may be withheld from the

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<sup>1</sup>In your letter to this office, you state that the information you seek to withhold has been "highlighted/ marked;" however, we note that the submitted information lacks any type of markings.

<sup>2</sup>Section 552.101 also incorporates constitutional privacy, but we are unaware of any grounds on which the requested information is confidential under either the federal or state constitution. We note that the scope of constitutional privacy is narrower than that of common-law privacy. *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985).

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. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 (1992) at 1.

Although the department claims that the submitted information is excepted from disclosure under section 552.101, we do not find any information that is protected by common-law privacy. Therefore, we conclude that the submitted information cannot be withheld pursuant to section 552.101 in conjunction with common-law privacy. Additionally, we are not aware of any law that makes the requested information confidential, nor do you raise any such statute. Accordingly, we conclude the department may not withhold the submitted information based on section 552.101 of the Government Code.

We next consider whether any of the submitted information may be withheld pursuant to section 552.107 of the Government Code. Section 552.107 states that information is excepted from required public disclosure if:

- (1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct; or
- (2) a court by order has prohibited disclosure of the information.

As interpreted by this office, subsection (1) of this provision essentially incorporates the attorney-client privilege. *See* Open Records Decision No. 574 (1990). Additionally, we observe that section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11.

Relying on section 552.107(1) of the Government Code, you contend that "portions of the enclosed documents," contain communications between department staff and department attorneys. In this instance, we conclude that you have established that the submitted information constitute's an attorney's communication of advice or opinion or a client confidence. Therefore, the submitted information may be withheld pursuant to section 552.107(1).

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 any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref: ID# 113048

Enclosures: Marked documents

cc: Mr. William B. Thomas, Jr.  
CJ's Scoreboard  
11888 Starcrest  
San Antonio, Texas 78249  
(w/o enclosures)