



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 7, 1998

Ms. Kate Herrington  
Open Records Coordinator  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-2668

OR98-1147

Dear Ms. Herrington:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 114714.

The Texas Department of Mental Health and Mental Retardation ("MHMR") received a request for "all peer review records for both peer review meetings in 1997," concerning the requestor. You state that "on the basis of exceptional and unusual circumstances" MHMR will release to the requestor the documents related to the second peer review. Accordingly, in response to the request, you submitted to this office for review the information which you contend consists of the first peer review records. MHMR asserts that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 2(a) of article 4525b, V.T.C.S. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 2(a) of article 4525b, V.T.C.S. makes confidential "all proceedings of a nursing peer review committee" and "all communications made to a nursing peer review committee."<sup>1</sup> Having reviewed the documents at issue in light of the arguments that you have presented, we conclude that the documents fall within the scope of the cited confidentiality provision and are, therefore, excepted from disclosure under section 552.101 of the Government Code.

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<sup>1</sup>Similarly, section 5.06(g) of article 4495b, V.T.C.S. makes confidential "all proceedings and records of a medical peer review committee," as well as "all communications made to a medical peer review committee."

However, we note that pursuant to section 3(a)(7)(c) of article 4525b, if the “nursing peer review committee discloses information . . . that could result in reprimand, suspension, termination, or other disciplinary action of a nurse, or itself takes such action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation.” As we are unable to establish that section 3(a)(7)(c) of article 4525b applies here, we find that, based upon the request, the submitted materials are protected in their entirety by section 2(a) of article 4525b.<sup>2</sup>

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,

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# 114714

Enclosures: Submitted documents

cc: Ms. Frances Wilson, LVN  
1210 Hwy 281  
Wichita Falls, Texas 76302  
(w/o enclosures)

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<sup>2</sup>We further note that “[t]he peer review committee disclosing the information and the person receiving information disclosed under this section shall protect, to the extent possible, the identity of patients.” See also Gov’t Code § 552.352 (the distribution of confidential information is a criminal offense) .