



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 13, 1998

Mr. Michael G. Young
Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-1217

Dear Mr. Young:

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# 115174.

The Texas Department of Health (the "department") received a request for "the private physician's records and Thomason Hospital's records," concerning complaint number 97-07. In response to the request, you submit to this office for review a copy of the information which you assert is responsive. You claim that the submitted records are excepted from disclosure by section 552.101 of the Government Code in conjunction with several confidentiality statutes. We have considered the exception and arguments you have raised and reviewed the submitted information.

Initially, we address your contention that the department "is not in the possession of any private physician's records relating to [the specified] complaint." Section 552.002(a) defines the term "public information" to include information that is "collected, assembled, or maintained . . . (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a) (emphasis added). Generally, the act does not require a governmental body to obtain information not in its possession from another entity.¹ See Open Records Decision

¹However, a governmental body has a duty to obtain requested information from another entity if that entity holds the information on behalf of that governmental body. See Open Records Decision No. 534 (1989) at 2. As a courtesy to the requestor, if the department has knowledge of where the requested information may be obtained, the department could refer the requestor to that source.

Nos. 561 (1990), 558 (1990), 445 (1986). Based on your assertions, we conclude that to the extent that the requested information is not in the possession or control of the department, section 552.002 does not require compliance with that portion of the request.²

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. You contend that the information at issue which the department obtained from the hospital is confidential under chapter 241 of the Health and Safety Code. Subchapter G of chapter 241 of the Health and Safety Code provides for the disclosure of health care information in the possession of hospitals.

Section 241.152(a) of the Health and Safety Code provides that "a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative." "Health care information" means "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." Health & Safety Code § 241.151(1). Section 241.153(3) provides several instances in which a patient's health care information may be disclosed without the patient's written authorization. One such instance is if the disclosure is to "a federal, state, or local government agency or authority to the extent authorized or required by law." *Id.* § 241.153(3). There is no provision which addresses the re-release of the health care information by the department. Therefore, we do not believe that section 241.152 is applicable in this instance. You may not withhold any information under section 241.152 of the Health and Safety Code.

You next argue that the submitted documents must be withheld as confidential medical records. 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 records at issue contain information that appears to have been directly obtained from medical records and communications and such information may be disclosed only in accordance with the MPA. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We agree that the department must withhold most of the submitted information under the MPA. However, we have tagged certain documents that do not appear to be medical records protected by the MPA.

²The department must, nevertheless, make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975); *see* Gov't Code § 552.353 (providing penalties for failure to permit access to public information).

Section 552.101 of the Government Code also encompasses the common-law right of privacy. *Common-law privacy excepts from disclosure private facts about an individual. Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public pursuant to common-law privacy 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. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. We have marked portions of one document which must be withheld under section 552.101 in conjunction with the common-law right of privacy.

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, appearing to read "Sam Haddad", is written over a large, loopy scribble.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 115174

Enclosures: Marked documents

cc: Mr. Michael R. "Mickey" Milligan
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(w/o enclosures)