

January 27, 1999

Ms. Sharon Sela  
Assistant City Attorney  
City Attorney's Office  
City Hall  
Dallas, Texas 75201

OR99-0244



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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JOHN CORNYN  
Attorney General

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Dear Ms. Sela:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121431.

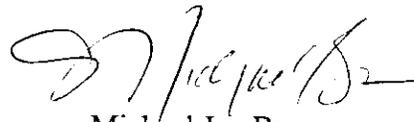
The Dallas Police Department (the "department") received a request for information related to the arrests of two named individuals. You relate that you do not oppose releasing most of the responsive information, but seek to withhold a portion, contending that it is excepted from disclosure by section 552.101 of the Government Code in conjunction with the Medical Practice Act ("MPA") V.T.C.S. article 4495b, section 5.08(b). You have supplied the information you seek to withhold. We have considered the exception you claim and have reviewed the documents at issue.

We note that the department received the request for the subject information on October 8, 1998, and that the department's request for opinion was received by this office on October 28, 1998. Government Code section 552.301(a) requires a governmental entity seeking to withhold public information to submit a request for a decision to the attorney general "not later than the 10th business day after the date of receiving the written request." Government Code section 552.302 states: "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information." This legal presumption that the requested information is open to the public may be overcome only by a demonstration of a compelling interest. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). A demonstration that the requested information is deemed confidential by law is a compelling interest sufficient to negate this presumption. See Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code excepts from disclosure information considered confidential by law, including information made confidential by statute. The MPA makes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician confidential. Section 5.08(j)(3) of the MPA also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to medical records is not governed by chapter 552 of the Government Code, but rather the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). From our review of the submitted documents we conclude that the records were created by a physician and are subject to the MPA. The department may only release this information only in accordance with 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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 121431

Enclosures: Submitted documents

cc: Mr. Randy Schaffer  
1301 McKinney, Suite 3100  
Houston, Texas 77010  
(w/o enclosures)