



March 16, 1999

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

OR99-0734

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# 122818.

The Texas Department of Health ("TDH") received a request for information relating to TDH's investigation of Park Place Medical Center.<sup>1</sup> You ask whether portions of the requested information must be withheld pursuant to section 552.101 of the Government Code which requires withholding, *inter alia*, information made confidential by statute.<sup>2</sup> We have considered the exception you claim and have reviewed the documents at issue.

You ask whether the submitted Intake Report and Complaint Report are subject to the federal regulations which govern the release of the HCFA 2567 form. *See* 42 C.F.R. §§ 401.126, .133. We have previously determined that they are not. *See* Open Records Letter

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<sup>1</sup>Please note that we ruled on the disclosure of some of the requested documents in Open Records Letter No. 99-0562 (1999).

<sup>2</sup>TDH failed to timely request an open records decision from this office. Gov't Code § 552.301. In most cases, failure to timely request a decision results in the legal presumption that the requested information is presumed to be open to the public, and only the demonstration of a compelling interest can overcome the presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). However, the presumption of openness is overcome when the requested information is deemed confidential by law. *See* Open Records Decision No. 150 (1977).

Nos. 99-0483 (1999), 99-0447 (1999). Accordingly, you may not withhold any information contained in the submitted documents under these regulations.

We agree that the document you have marked is a medical record and is, thus, subject to the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Medical records created or maintained by a physician are confidential under the MPA. Medical records may only be released only in accordance with the MPA. *See* V.T.C.S. art. 4495b, §§ 5.08(c), (j); Open Records Decision No. 598 (1991).

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.

Sincerely,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref:: ID# 122818

Enclosures: Submitted documents

cc: Ms. Amy Upshaw  
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