



February 7, 2002

Ms. Mary Barrow Nichols
Senior Vice President and General Counsel
Texas Mutual Insurance Company
221 West 6th Street, Suite 300
Austin, Texas 78701-3403

OR2002-0582

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158314.

The Texas Mutual Insurance Company ("Texas Mutual") received a request for information contained in two specified claim files. You state that Texas Mutual will make some of the responsive information available to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the representative samples of information you submitted.¹ Comments also were submitted to this office on behalf of the requestor.²

Initially, we address the requestor's contention that it has not made a request for information under chapter 552 of the Government Code. The requestor claims to have a right of access to the information in question under other provisions of law. Texas Mutual believes, however, that chapter 552 is applicable to the requestor's November 7, 2001 letter. This office cannot resolve disputes of fact in the opinion process.³ Where an issue cannot be

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes Texas Mutual to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²See Gov't Code § 552.304 (providing that any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

³See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986).

resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection.⁴ Texas Mutual has chosen to treat the requestor's letter as a request for information under chapter 552. Therefore, we will address Texas Mutual's arguments. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 665 (2000).

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 exception encompasses information that another statute makes confidential. The disclosure of medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See id.* §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990).

Texas Mutual states that it received the information in question for the sole purpose of adjusting claims. Texas Mutual also informs us that it has not received consent from the patients or their representatives for the release of confidential information. We have marked the submitted information that is subject to the MPA. Texas Mutual may release this information only if the MPA permits Texas Mutual to do so.

⁴*See* Open Records Decision No. 552 at 4 (1990).

The submitted documents also include records relating to chiropractors. Chapter 201 of the Occupations Code governs the practice of chiropractic. Section 201.042 of the Occupations Code provides in part:

(a) Communications between a chiropractor and a patient relating to or in connection with any professional services provided by a chiropractor to the patient are confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 201.402(a)-(c). Chapter 201 includes exceptions to confidentiality and consent provisions that correspond to those contained in the MPA. *See id.* §§ 201.403, .404, .405. We have marked the records relating to chiropractors that are subject to chapter 201 of the Occupations Code. Texas Mutual may release these records only if chapter 201 of the Occupations Code permits Texas Mutual to do so.

The remaining records contain information that Texas Mutual must withhold under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Common-law privacy under section 552.101 protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked the information that Texas Mutual must withhold under section 552.101 in conjunction with common-law privacy.

The remaining records also contain social security numbers. A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that Texas Mutual either obtained or maintains the social security numbers in question pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes Texas Mutual to obtain or maintain a social security number. We therefore have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing these social security numbers, Texas Mutual should ensure that they were not obtained and are not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, some of the submitted information is confidential under section 552.101 of the Government Code in conjunction with the MPA and chapter 201 of the Occupations Code. This information may be released only if the MPA or Chapter 201 permit Texas Mutual to do so. Texas Mutual must withhold parts of the remaining records under section 552.101 of the Government Code in conjunction with common-law privacy. The social security numbers in these records may be confidential under section 552.101 in conjunction with federal law. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

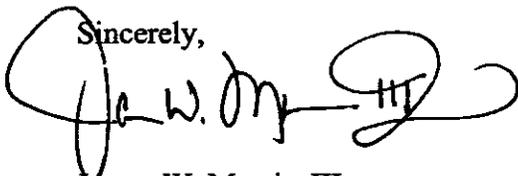
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is stylized with a large initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 158314

Enc: Marked documents

c: Ms. Kathy Ditto
Sharrock Electric
P.O. Box 8360
Fort Worth, Texas 76124-8360
(w/o enclosures)

Ms. L. Kimberly Steele
Hermes Sargent Bates
1717 Main Street, Suite 3200
Dallas, Texas 75201
(w/o enclosures)