



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2008

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Ms. Carol Longoria
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2008-02349

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 302362.

The University of Texas Medical Branch at Galveston (the "university") received a request for information related to the Special Assistance Office. You state that the university does not have information responsive to a portion of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.1235 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. You claim that the submitted information consists of medical records, access to which is governed

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. — San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

by the Medical Practices Act ("MPA"). Occ. Code §§ 151.001-165.160. 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, other than a person listed in Section 159.004 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.

Id. § 159.002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487(1987), 370 (1983), 343 (1982). The submitted information does not consist of records created by a physician or someone under the supervision of a physician; therefore, none of the information may be withheld on that basis.

Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *Id.* at 683. Further, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and

telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Based upon your representations and our review of the submitted information, we find that the university has failed to demonstrate how any portion of the submitted information constitutes highly intimate or embarrassing information for the purposes of common-law privacy. Therefore, the university may not withhold any of the submitted information under section 552.101 on that basis.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Based upon your representations and our review of the submitted information, we find that the university has failed to demonstrate how any portion of the submitted information is protected by constitutional privacy. Therefore, the university may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.1235 of the Government Code excepts from public disclosure "the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). However, this section does not except from disclosure the amount or value of an individual gift, grant, or donation. *See id.* § 552.1235(b). "Institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an "institution of higher education" as any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section. *See* Educ. Code § 61.003. Because section 552.1235 does not provide a definition of "person," we look to the definition provided in the Code Construction Act. *See* Gov't Code § 311.005. "Person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

In this instance, the submitted information only lists the names, addresses, telephone numbers, and birth dates of patients of the university. You state that some of the patients are also donors to the university for the purposes of 552.1235(a) of the Government Code. We note, however, that the submitted information does not itself distinguish between those patients who are donors and those who are not. Accordingly, you have failed to demonstrate

the applicability of section 552.1235 to the submitted information and it may not be withheld under section 552.101. As you raise no further arguments against disclosure, the submitted 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

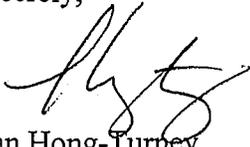
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 302362

Enc. Submitted documents

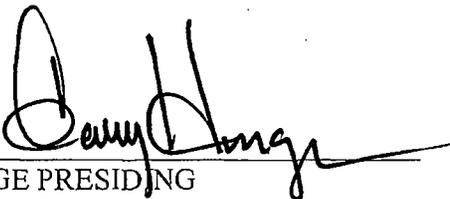
c: Mr. Brian Sasser
KPRC-TV
P.O. Box 2222
Houston, Texas 77252
(w/o enclosures)

Regarding Attorney General open records letter ruling OR2008-02349, Plaintiffs timely filed this cause of action to challenge OR2008-02349. The requestor has voluntarily withdrawn his request for information.

IT IS THEREFORE ORDERED that:

1. Because the request relating to OR2008-02345 has been abandoned, no further information should be released in reliance on Letter Ruling OR2008-02345. Letter Ruling OR2008-02345 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Texas Government Code § 552.301(f).
2. Because the request relating to OR2008-02349 has been voluntarily withdrawn by the requestor, no further information should be released in reliance on Letter Ruling OR2008-02349. Letter Ruling OR2008-02349 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Texas Government Code § 552.301(f).
3. All costs of court are taxed against the party incurring same.
4. This cause is hereby DISMISSED without prejudice pursuant to Tex. Govt. Code §552.327 because the requestor relating to OR2008-02345 has abandoned the request, and the requestor relating to OR2008-02349 has voluntarily withdrawn the request.

SIGNED on Nov. 21, 2016.

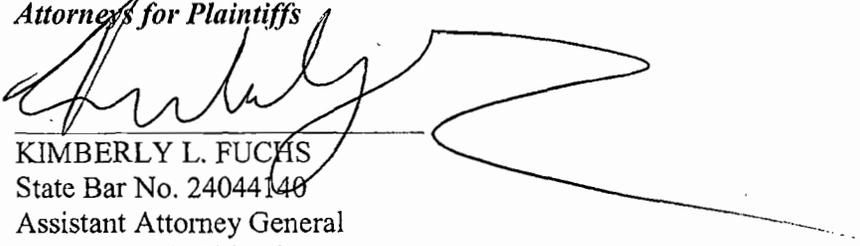

JUDGE PRESIDING

AGREED:


RAYMOND WHITE
State Bar No. 21321950
McGinnis Lochridge
600 Congress Avenue, Suite 2100

Austin, Texas 78701
Telephone: (512) 495-6035
Facsimile: (512) 505-6331
rwhite@mcginnislaw.com

Attorneys for Plaintiffs

A large, stylized handwritten signature in black ink, appearing to read 'Kimberly L. Fuchs', is written over the printed name and extends across the middle of the page.

KIMBERLY L. FUCHS
State Bar No. 24044140
Assistant Attorney General
Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
Kimberly.fuchs@oag.texas.gov

Attorney for Defendant