May 11, 2017

Ms. Ana Vieira Ayala  
Senior Attorney & Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

Dear Ms. Ayala:

This office issued Open Records Letter No. 2015-24343 (2015) on November 19, 2015. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on November 19, 2015. See generally Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act"). This ruling was assigned ID# 587818 (OGC# 164161).

The University of Texas Health Science Center at Houston (the “university”) received a request for all information pertaining to a named individual. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Section 181.006 provides “[f]or a covered entity that is a governmental unit, an individual’s protected health information: (1) includes any information that reflects that an individual received health care from the covered entity; and (2) is not public information and is not subject to disclosure under Chapter 552, Government Code.” Health & Safety Code § 181.006. Health & Safety Code § 181.006(2). Section 181.001(b)(2)(A) defines “covered entity,” in part, as any person who:
(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site.

Id. § 181.001(b)(2)(A). The university asserts it is a covered entity for purposes of section 181.006 of the Health and Safety Code. However, in order to determine whether the university is a covered entity, we must address whether the university engages in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. Section 181.001 states that “unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards ["HIPAA"].” Id. § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. See 45 C.F.R. § 160.103. HIPAA defines “individually identifiable health information” as information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Id. Based on the university’s assertions we conclude the university is a health care entity that is in the practice of collecting, using, and storing protected health information, and is a covered entity for purposes of section 181.006 of the Health and Safety Code. In this instance, the request seeks unspecified records concerning the named individual. You indicate that denying or confirming the university maintains such records may reveal that the named individual received health care from the university. Thus, we must rule conditionally. To the extent the university maintains any information that reflects that the named individual
received health care from the university it may withhold such information under section 181.006 of the Health and Safety Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sdk

Ref: ID# 587818

c: Requestor