



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2017

Ms. Melanie J. Rodney
Assistant County Attorney
Harris County Attorney's Office
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2017-19763

Dear Ms. Rodney:

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# 673452 (CA File No. 17HSP0493).

The Harris County Hospital District d/b/a Harris Health System (the "system") received a request for personnel information pertaining to a named employee. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

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. You contend the information at issue is protected under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

See Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See id.* § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. Therefore, we held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the system may not withhold any portion of the information at issue on that basis.

Section 552.101 of the Government Code also encompasses section 241.152 of the Health and Safety Code, which states, in relevant part:

- (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient’s legally authorized representative without the written authorization of the patient or the patient’s legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines “health care information” as “information . . . recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.” *Id.* § 241.151(2). You claim some of the submitted information consists of health care information related to the history, diagnosis, treatment, or prognosis of a patient. Upon review, we find the information we marked consists of health care information that is confidential under section 241.152 of the Health and Safety Code. Accordingly, the system must withhold the information we marked under section 552.101 of the Government Code

in conjunction with section 241.152 of the Health and Safety Code.² However, you have failed to demonstrate the remaining information you marked relates to the history, diagnosis, treatment, or prognosis of an identified patient for purposes of section 241.152 of the Health and Safety Code. Accordingly, none of the remaining information at issue may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by section 181.006 of the Health and Safety Code, which states, in part, “for a covered entity that is a governmental unit, an individual’s protected health information . . . is not public information and is not subject to disclosure under [the Act].” *Id.* § 181.006(2). Section 181.001(a) states, “[u]nless 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. 45 C.F.R. § 160.103. However, “protected health information” excludes individually identifiable health information in employment records held by a covered entity in its role as employer. *See id.*

You assert the remaining information is maintained by the system and relates to the provision of health care. However, this information is contained in the employment records and the system holds it in the system’s role as an employer. Thus, the system has failed to demonstrate the information at issue consists of protected health information that is confidential under section 181.006, and the system may not withhold it under section 552.101 on that ground.

In summary, the system must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 241.152 of the Health and Safety Code. The remaining information must be released.

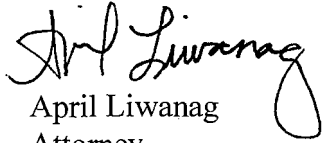
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "April Liwanag". The signature is fluid and cursive, with a large loop at the end of the last name.

April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 673452

Enc. Submitted documents

c: Requestor
(w/o enclosures)