



The Attorney General of Texas

May 10, 1982

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Open Records Decision No. 314

Re: Request for personnel
file by agent of public
employee

Dear Mr. Souza:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., regarding the release of certain information to the appointed representative of a former school district employee.

In 1980, a teacher employed by the San Antonio Independent School District was placed on an involuntary leave of absence, pending a psychiatric evaluation. Subsequent to the evaluation, the school board voted to continue the teacher in leave of absence status. In October 1981, a television reporter presented to school district officials a document appointing her the teacher's "representative to view and photograph all... personal records" in the custody of the district. You ask whether, in light of the provisions of article 5561h, V.T.C.S., you should release to the reporter information in the teacher's personnel file relating to her mental health.

Section 3(a)(1) of the Open Records Act excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Article 5561h provides, in pertinent part:

Section 1. (a) 'Professional' means any person authorized to practice medicine in any state or nation or any person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) 'Patient/Client' means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of

any mental or emotional condition or disorder, including alcoholism and other drug addiction.

Confidentiality of Information

Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf, shall not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

Sec. 3. (a) The privilege of confidentiality may be claimed by the patient/client or by other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf.

(b) The professional may claim the privilege of confidentiality but only on behalf of the patient/client. The authority to do so is presumed in the absence of evidence to the contrary.

Sec. 4.(b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:

(1) to governmental agencies where such disclosures are required or authorized by law;

(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(4) to any person bearing the written consent of the patient/client, or a parent if the patient/client is a minor, or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or governmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act; or

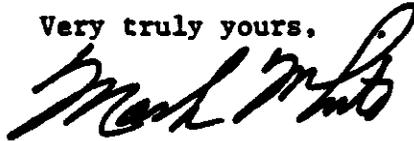
(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client.

Records relating to this teacher's psychiatric evaluation clearly constitute "records of the identity, diagnosis, evaluation or treatment of a patient/client which are created or maintained by a professional." Under whatever authority the school district itself obtained the documents relating to the evaluation, it is now clearly prohibited by section 2(c) from disclosing such information. Cf.

Educ. Code §13.905(c) (medical examination of school employee whose condition interferes with performance of duties). The exceptions to the privilege of confidentiality listed in section 4(b), including authorization for release of confidential information to a patient's personal representative, apply only to the "disclosure of confidential information by a professional." Whatever information the teacher's personal representative might obtain from the evaluating physician under section 4(b)(4), she is not authorized to obtain any mental health information directly from the school district, and as we have noted, the school district is likewise prohibited by section 2(c) from furnishing it to anyone except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained. Article 5561h permits the district to release the information under this standard, but does not require it to do so. In view of this answer, we need not address your second and third questions.

You have not asked whether portions of the teacher's personnel file other than those containing mental health information are available to the teacher's personal representative, and we do not address this matter.

Very truly yours,



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