



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 10, 1990

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR90-472

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10473.

You state that you have received a request for employment applications of employees currently working at the Evins Regional Juvenile Center. The application of one of these employees, a nurse, reveals the amount of care required by an identified former client of the applicant. We have considered the exception you claimed, specifically section 3(a)(1), as it incorporates the constitutional and common law doctrines of privacy.

The test for a violation of common law privacy through a public disclosure of private facts was set out in Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex.1976), cert. denied, 430 U.S. 930 (1977). The test requires that the information disclosed be highly intimate or embarrassing, such that its disclosure would be "highly objectionable to a person of ordinary sensibilities;" and that it be of no legitimate public concern. Id. In Open Records Decision No. 262 (1980) this office listed information about drug overdoses, acute alcohol addiction, obstetrical/gynecological illness, convulsions/seizures, and emotional/mental distress as examples of the type of information that would be protected. However, Open Records Decision No. 343 (1982) notes that the above list was not intended to be exhaustive.

Accordingly, we find that the disclosure of the amount of care required by this individual is also highly intimate private information, disclosure of which would be highly offensive to a person of ordinary sensibilities. We also

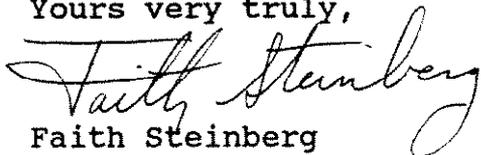
find that the information is of no legitimate public concern. The information concerns a private individual cared for by the applicant as part of private employment. Under these circumstances, we cannot see any legitimate public concern in disclosure of the information. Therefore, you may withhold the specification of the amount of care required by the patient. In this case, such specification supplies the amount of detail that prior open records decisions have indicated bring patient information within the zone of protected privacy. See, e.g., Open Records Decision No. 262.

However, we do not find that a protected privacy interest would be violated by disclosure of the patient's name. Prior decisions of this office have made it clear that the mere fact of injury or illness is not protected under privacy law, unless the circumstances of the problem meet the Industrial Foundation test. See, e.g., Open Records Decision Nos. 370, 262. Nor have the identities of individuals requiring medical care been protected under our reading of privacy law. Id. The individual's privacy interests should be adequately protected by the exclusion of the information indicated above.

Our finding that common law privacy doctrine prevents disclosure of the amount of care required by this patient renders discussion of the application of constitutional privacy law to this case unnecessary. We note, however, that the disclosure of the patient's name does not come within the constitutional "zones of privacy" recognized in Industrial Foundation.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-472.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

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Ref.: ID# 10473

Enclosure: Open Records Decision Nos. 262, 343, 370