



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 6, 1991

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR91-261

Dear Mr. Driscoll:

On behalf of the County Clerk of Harris County, 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# 11453.

The County clerk has received a request for the following information:

The total number of involuntary mental health commitments in Harris County for 1990, for both public and private hospitals, the name of the public or private hospital to which the patient [was] committed; and the name of the admitting doctor for those commitments.

You inform us that:

Based upon information furnished by the County Clerk's office, it appears that 2,765 involuntary mental health commitments were filed in 1990. This number includes those who were committed for mental illness, alcohol abuse, and drug abuse. A sample file is enclosed for your information and review. While statistical data is maintained regarding the total number of cases, data which distinguishes between public and private patients, the facilities to which the patients are committed, and the names of the admitting doctors is not compiled.

The requestor asserts that because she does not seek the names or any identifying information about the patients committed, she believes that the

information is not excepted from disclosure. You assert that the information sought does not exist in the form in which it was requested, *i.e.* that your records do not list the names of admitting physicians nor do they distinguish between public and private hospitals. We understand you to assert that, in the alternative, documents in the custody of the county clerk from which some of the information sought may be redacted and compiled, are themselves excepted from disclosure under section 3(a)(1) of the act.

With regard to your first argument, we note that the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 572, 555 (1990); 534 (1989). Thus, to the extent that the request would require you to prepare information that does not now exist, you need not comply.

Additionally, you assert that the information upon which you would have to rely in order to comply with the request is excepted from disclosure by section 3(a)(1) of the act, which excepts:

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

You claim that the requested information is excepted by article 5547-12, V.T.C.S., which is included in the general provisions chapter of the Mental Health Code and governs the disposition of papers filed with the county clerk on the mentally ill docket. Prior to its amendment in 1985, article 5547-12, V.T.C.S., excepted from disclosure only

[e]ach and every statement of facts, together with each and every other writing which discloses intimate details of the personal and private life of the accused or the patient or which discloses intimate details of the personal life of any and all members of the family of the accused or the patient.

In Open Records Decision No. 260 (1984), this office held that article 5547-12

makes confidential *certain* records filed in connection with any proceedings under the Mental Health Code. The statement of facts in every such proceeding is clearly excepted from disclosure. Other material is excepted only if it 'discloses

intimate details of the personal and private life of the accused' or of a member of his family. In our opinion, the county clerk, in consultation with the county attorney, must make the initial determination as to whether particular information satisfies these criteria.

Id. at 2 (emphasis added).

Subsequent to the issuance of Open Records Decision No. 260, the legislature amended article 5547-12, V.T.C.S., in order to broaden the scope of confidentiality conferred by the provision and overcome the result of the decision. Acts 1985, 69th Leg., ch. 70, § 4, at 478; see Bill Analysis, H. B. 1256, 69th Leg. (1985). That article now provides:

Each and every writing, including but not limited to docket books, indices, judgment books, etc., in a mentally ill docket in the office of the county clerk is hereby declared to be a public record of a private nature which may be used, inspected, or copied only by a written order of the county judge, a judge of a court having probate jurisdiction, or a district judge of the county in which the docket is located. No such order shall issue until the issuing judge has entered findings that said use, inspection, or copying is justified and in the public interest or that such release is to a patient, former patient, or to a person designated by the patient upon signed and written consent for the release of such information by the allegedly mentally ill person; and that the reasons for such use, inspection, or copying fall within the statutory exemptions to confidentiality of mental health information or physician/patient privilege where the disclosure of such information is in issue. Such records shall be released to any attorney representing the proposed patient in a proceeding held under this code. Nothing herein shall prevent access by law enforcement personnel to necessary information in execution of a writ or warrant.¹ (Emphasis added.)

¹In your letter requesting our decision, you state:

The writings filed in this docket are prepared to invoke the exercise of the judiciary and are a part of judicial proceedings. Therefore, it may be argued that this docket is a records of the judiciary which is not subject to the Open

We agree with your assertion that the information in the docket, in its entirety, is excepted from disclosure.

We have considered the exception you claimed, specifically section 3(a)(1), and have reviewed the documents at issue. The plain language of article 5547-12, V.T.C.S., resolves your request. For this reason, you may withhold the requested information.

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 OR91-261.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/mc

Ref.: ID# 11453

Enclosures: Open Records Decision Nos. 572 (1990); 260 (1984)

cc: Ms. Dianna Hunt
Houston Chronicle
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Records Act. Tex. Rev. Civ. Stat. Ann. art. 6252-17a, § 2(1)(G) (Vernon Supp. 1991). Access to this information is within the discretion of the appropriate courts.

Because of the specific language of article 5547-12, V.T.C.S., making confidential all writing in a mentally ill docket, we need not decide whether such information falls within section 2(1)(G) of the act.