



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 4, 1993

Ms. Patricia Cook  
Board of Vocational Nurse Examiners  
9101 Burnet Road, Suite 105  
Austin, Texas 78758

OR93-057

Dear Ms. Cook:

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# 18065.

The Board of Vocational Nurses Examiners received a request for its records regarding the investigation of Linda A. Thurman. You seek to withhold the medical and pharmacy record of residents at Village Manor Nursing Home under section 3(a)(1) of the Open Records Act, based on the privacy rights of the nursing home residents.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This exception incorporates information that is made confidential by a common-law right to privacy; thus, section 3(a)(1) excepts information if its disclosure would violate the common-law tort of invasion of privacy through the disclosure of private facts. *Industrial Found. of the S. v. Texas Indus. Accident Bd.* 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 358 U.S. 931 (1977). Under the test for violation of the common-law right to privacy enunciated by the Texas Supreme Court, information is protected from required public disclosure only when (1) it contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Id.* at 685

Information about the kinds of prescription drugs a nursing home resident is taking constitutes highly intimate or embarrassing facts about that resident's private affairs and is of no legitimate concern to the public. We conclude that the disclosure of such information is protected by common-law privacy. *See* Open Records Decision No. 455 (1987) at 5 (citing *Whalen v. Roe*, 429 U.S. 589 (1977)). You must therefore withhold

the names of the residents and any other information on the records that tends to identify a resident.

You also say that "Village Manor Nursing Home's property interests may be implicated by disclosing such documents as indicated by section 7(c)." You do not explain why this is so. Accordingly, we have no basis for concluding that an exception in the Open Records Act which protects the property interests of a third party, such as section 3(a)(10), applies to the information you seek to withhold.

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 OR93-057.

Yours very truly,

A handwritten signature in cursive script that reads "Kay Guajardo". The signature is written in black ink and is positioned above the typed name and title.

Kay Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/mc

Ref: ID# 18065

cc: Mr. Russell C. Brown  
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Enclosures: submitted documents