



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 21, 1993

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR93-476

Dear Mr. Raiford:

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# 18637.

The Texas Department of Human Services (the "department") has received a request for information relating to the number of clients living in Texas nursing homes and certain Texas Intermediate Care Facilities-Mental Rehabilitation ("ICF-MRs"). Generally, the requestor here seeks demographic information about the client population of certain state facilities. The requestor expressly excludes the names of clients or any information that could be used to identify individual clients. Specifically, the requestor seeks "the number of residents in nursing homes and ICF-MRs by age groups 0-5, 6-10, 11-15, 16-22, and 22 and over" and "a listing of the 'top ten' diagnoses state wide without regard to facility and the number or percentage of persons under 22 years old with each diagnosis." You seek to withhold this information under section 3(a)(1) of the Open Records Act, which excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," in conjunction with title 42 of the United States Code, sections 671(a)(8) and 1396(7); part 42 of the Code of Federal Regulations, sections 431.300 through 431.307; part 45 of the Code of Federal Regulations, sections 1355.21(a) and 1355.30; sections 12.003, 21.012, and 41.0011(b)(10) of the Texas Human Resources Code; section 34.08 of the Texas Family Code; section 611.002 of the Texas Health and Safety Code; and section 5.08 of the Texas Medical Practices Act, article 4495b, V.T.C.S. In addition, you assert section 3(a)(1) in conjunction with privacy doctrine.

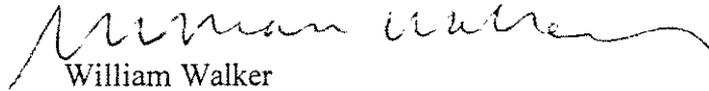
This office addressed a similar situation in Open Records Decision No. 165 (1977). In that decision, this office determined that the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, did not make confidential certain demographic information, *i.e.*, age, sex, race, ethnicity, zip code, grade, and school of certain students, because release of such information would not make individual students "personally identifiable." This decision rested its conclusion on *Department of the Air Force v. Rose*, 425 U.S. 352 (1976), in which the United States Supreme Court held that certain documents relating to the disciplining of United States Air Force Academy cadets were subject to public disclosure under the federal Freedom of Information Act, 5 U.S.C. § 552, rejecting the argument that disclosure was barred in any case in which it could not be guaranteed that disclosure would not lead someone to guess the substance of information made confidential. The court noted that the protection afforded individuals under the federal act "was directed at threats to privacy interests more palpable than mere possibilities." 425 U.S. at 380, n.19. *See also* Attorney General Opinion H-223 (1974) (fact that a taxpayer requested reconsideration of his tax status is public even though information concerning his status is made confidential by statute); 212, 188 (1978); 102, 88 (1975) (fact of whether or not a person had filed an accident report is public, even though the content of the report is made confidential by statute); 40 (1974).

Here, the requestor seeks statistical information that has been de-identified. We conclude that release of the information at issue here does not implicate the clients' privacy interests, because release of this information would not make them "personally identifiable." We thus find your assertion of section 3(a)(1) to be inapplicable.

Finally, we note that you advise us that the requested information is not available in the form requested and that preparation thereof would entail a computer search. We are unable in an open records ruling to determine as a matter of fact whether the requested information is held by the department in a form such that it has a duty to make available to the requestor. We offer the following guidelines: The Open Records Act does not require a governmental body to make available information that does not exist, Open Records Decision No. 362 (1983), nor does it require that a governmental body prepare or compile information in a form or manner requested by the public, Open Records Decision No. 467 (1987), or to arrange records in an order not maintained in its files, Attorney General Opinion JM-292 (1984). However, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990) at 8. A request for information may not be denied merely because it requires a minimal computer search to locate existing information. Attorney General Opinion JM-672 (1987). If the requested information is held by the department in a form such that it has a duty to make available under the foregoing guidelines, then the requested information must be released in its entirety.

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 contact this office.

Yours very truly,



William Walker
Assistant Attorney General
Open Government Section

WW/GCK/jmn

Ref.: ID# 18637

cc: Ms. Denise Gamino
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