



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 27, 1995

Mr. Thomas Mann, Jr.  
General Counsel  
Texas Commission on Alcohol and Drug Abuse  
710 Brazos Street  
Austin, Texas 78701-2576

OR95-233

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28223.

The Texas Commission on Alcohol and Drug Abuse (the "commission") received a request for information regarding an investigation of alleged client abuse by a licensed chemical dependency counselor. You claim the requested information is excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 464.010 of the Health and Safety Code provides that:

(e) All records *made by the commission* during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

(1) on court order;

(2) on written request and consent of the person under investigation or that person's authorized attorney; or

(3) as provided by Section 464.011. [Emphasis added.]<sup>1</sup>

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<sup>1</sup>Section 464.011 is not applicable to this particular request for records.

Accordingly, the investigation records "made by the commission" are confidential under this provision. As none of the exceptions authorizing release of confidential records under section 464.010(e) apply, you must withhold these records.<sup>2</sup> However, at least one of the requested documents was not "made by the commission during its investigation of alleged abuse or neglect." This document is confidential, however, under another source of law.

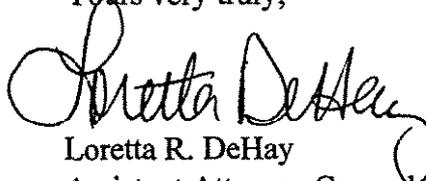
Title 42, section 2.2 of the Code of Federal Regulations provides that:

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.<sup>3</sup>

Accordingly, the "Intake Screening & Admission Form" is confidential and must be withheld by the commission.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

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<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>None of the exceptions to confidentiality apply in this instance.

LRD/LBC/rho

Ref: ID# 28223

Enclosures: Submitted documents

cc: Mr. R. Louis Bratton  
The Bratton Firm, P.C.  
604 West 12th Street  
Austin, Texas 78701  
(w/o enclosures)