



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1995

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR95-304

Dear Ms. Armstrong:

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# 31358.

The Travis County Sheriff's Office received an open records request for the personnel files of the sheriff's Chief of Staff and his Assistant Chief Deputy for investigation and parole. You acknowledge that most of the requested information is public and accordingly will be made available to the requestor. You seek to withhold certain other records pursuant to section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

You contend that each "declaration of psychological and emotional health" contained in the personnel files is deemed confidential under section 611.002 of the Health and Safety Code. We agree. Section 611.002 of the Health and Safety Code provides in pertinent part:

(a) Communications between a patient and a professional,¹ and records of the identity, diagnosis, *evaluation*, or treatment of a patient that are created or maintained by a professional, are confidential. [Emphasis added; footnote added.]

¹Section 611.001 of the Health and Safety Code defines "professional" in part as "a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder."

Clearly, the psychological declarations you have submitted to this office fall within the scope of section 611.002(a) and therefore are excepted from public disclosure pursuant to section 552.101 of the Government Code. The sheriff must withhold these records.

You also have submitted to this office "declarations of medical condition" that have been signed by a physician. The Medical Practice Act, V.T.C.S. article 4495b, provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). None of the exceptions to nondisclosure listed in article 4495b appear to apply in this instance. We therefore conclude that the sheriff must withhold these "declarations" as well.

You next contend that urinalysis test results are excepted from public disclosure by constitutional privacy. Again, we agree. Section 552.101 protects information coming within the constitutional right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office previously has recognized that constitutional privacy protects the results of mandatory urine testing. *See* Open Records Decision No. 455 (1987) at 5. The laboratory reports on the urinalysis must be withheld.

Finally, you contend that the name of one of the employee's personal physicians is protected from public disclosure by constitutional and common-law privacy because

[m]any individuals consider the identity of their physician or medical doctor a private matter and would not want such information disclosed. In addition, another person might be able to ascertain an individual's medical condition by learning the name of that individual's physician, particularly in cases where the physician in question is a specialist.

Although we agree in theory that circumstances may exist where the identity of an individual's personal physician may implicate that individual's common-law or constitutional privacy interests, we do not believe that the information at issue here does so. Unlike the hypothetical situation you present, the physician whose name you seek to withhold is a "family practice" physician whose identity should not be considered to be either "highly intimate or embarrassing" for purposes of common-law privacy, *see Industrial Found.*, 540 S.W.2d at 683-85, or among the "most intimate aspects of human affairs" for purposes of constitutional privacy. *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). Consequently, this information must be released.

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,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 31358

Enclosures: Submitted documents

cc: Ms. Christine Quirk
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(w/o enclosures)