



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Ms. Joanne Wright
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR95-659

Dear Ms. Wright:

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# 30095.

The Texas Department of Transportation (the "department") received a request for a copy of a release from a hospital stating that an employee had successfully completed a mandatory substance abuse treatment program. You assert that should such information exist regarding any department employee, the information must be withheld under sections 552.101 and 552.102 of the Government Code, as well as certain provisions of the Americans With Disabilities Act, 42 U.S.C. § 12112.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although you have raised section 552.101 in relation to privacy interests, we believe that a specific statute applies to the type of records requested. Section 611 of the Health and Safety Code governs the release of mental health records. A "patient" is defined in this chapter as a person who consults or is interviewed by a professional (or personnel under the professionals' direction) for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction. Thus, mental health records include records relating to substance abuse treatment.

Section 611.002 of the Health and Safety Code provides in part that:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004.

Section 611.004 provides that

- (a) A professional may disclose confidential information only:
 - (1) to a governmental agency if the disclosure is required or authorized by law;
 - (2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
 - (3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
 - (4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
 - (5) to the patient's personal representative if the patient is deceased;
 - (6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
 - (7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
 - (8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c); or
 - (9) in a civil action or in a criminal case or criminal law matter as otherwise allowed by law or rule.

....

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information

Release of records relating to substance abuse is clearly governed by section 611.004. If a record of substance abuse treatment exists regarding the named employee, the information must be withheld under section 552.101 of the Government Code in conjunction with section 611.004 of the Health and Safety Code.¹

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

LRD/LMM/rho

Ref.: ID# 30095

Enclosures: Submitted document

cc: Mr. William Capeheart
420 West Lee
Kingsville, Texas 78363
(w/o enclosures)

¹Because any existing records concerning employee substance abuse treatment must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 611.004 of the Health and Safety Code, we need not address your claims that the information is excepted from disclosure pursuant to the doctrine of common-law privacy or title 42, section 12112 of the United States Code (the Americans With Disabilities Act).