



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 3, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1170

Dear Ms. Nguyen:

You have asked this office 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# 30397.

The City of Houston (the "city") received three requests for information about nursing homes.¹ The individual who made the requests, an investigator for a law firm, specifically asked about complaints that had been received about the homes, correspondence between the city and the homes, and city actions taken concerning the homes. The city has disclosed documents that are responsive to the request except for eight documents that you contend are excepted from disclosure under the privacy provisions of section 552.101 of the Government Code. We have reviewed the documents at issue, which were submitted to this office.

Section 552.101 protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note initially that we are unable to determine, based on the information provided, whether the documents at issue are protected from disclosure by statute. However, section 242.127 of the Health and Safety Code makes confidential Texas Department of Human Services ("DHS") information concerning investigations of nursing facilities:

¹The request was directed to the Houston/Harris County Area Agency on Aging, which is apparently part of or affiliated with the Houston Department of Health and Human Services.

A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

Section 242.049 also provides for the confidentiality of certain types of information that the department evaluates for quality of care in nursing homes:

(d) The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of the open records law. . . .

Additionally, section 242.007(c) of the Health and Safety Code provides that the department may delegate to local agencies, including cities, "the power to make inspections and recommendations to the department" concerning certain types of institutions and hospitals. *See Health & Safety Code* § 242.002(5), (6) (defining the types of facilities covered under the chapter). Section 242.043(a) provides that the department "or the department's representative" may engage in investigations, surveys, and inspections of institutions. We have not been advised that the documents at issue are part of a DHS investigation or evaluation for quality of care in nursing homes, or that the city is an authorized representative of DHS. However, if these documents are made confidential under the provisions of sections 242.007, 242.043, 242.049, or 242.127, they may not be disclosed. *See Gov't Code* § 552.352 (it is criminal offense to distribute confidential information); *see also* Open Records Decision No. 138 (1976) (information concerning nursing homes compiled and used by city for its own purposes not excepted from disclosure under prior confidentiality provision).

You contend that the information is confidential on the basis of privacy even if it is not made confidential by statute. Section 552.101 also excepts from required public disclosure information made confidential by a constitutional or common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d. 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure information that contains highly intimate or embarrassing facts, the disclosure of which would be objectionable to a reasonable person, provided that such information is of no legitimate concern to the public. *Id.* at 685.

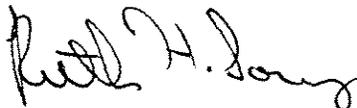
You state that the documents provide "factual accounts of certain named residents' highly private and personal information or physical illnesses that are of no legitimate public concern." Our review indicates that the documents also concern

conditions and procedures at the nursing homes and other information which is of legitimate public interest. We have flagged and marked the sections of documents at issue that are protected from disclosure by the common-law right of privacy. *See* Open Records Decision No. 455 (1987) at 9 (information concerning past illnesses and operations of individuals who were applicants for employment but who are not public officers or employees is not of legitimate public interest). Although some of the other information may be intimate and embarrassing, it is of legitimate public concern.

You also contend that the documents are protected by disclosural privacy under the federal constitution. The federal constitution encompasses the freedom from being required to disclose certain personal matters to the government. *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062. Disclosural privacy concerns matters "involving the most intimate aspects of human affairs." *Id.* However, there is no violation of disclosural privacy when there is a legitimate public interest in the information. *Id.*; Open Records Decision No. 455 (1987) at 5. As stated above, our review of the documents shows that there is a legitimate public interest in the information at issue. Therefore, *if the documents at issue are not otherwise made confidential by statute*, the city must withhold from disclosure under common-law privacy the information that is marked and release the other information in the documents at issue.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LRD/rho

Ref.: ID# 30397

Enclosures: Marked documents

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(w/o enclosures)