



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 12, 1996

Mr. Rick Ybarra
Open Records Coordinator
Office of the Attorney General
General Counsel Division, MC-018
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0308

Dear Mr. Ybarra:

Mr. Jack Else, Assistant Attorney General of the Medicaid Fraud Control Unit (the "MFCU") of the Office of the Attorney General of Texas, asks whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 22295.

The MFCU received a request for information concerning the Truman W. Smith Children's Care Center of Gladewater (the "center"). Mr. Else informs us that the MFCU has four investigative files concerning the center, two of which are currently open and under active investigation, and two of which are closed. He claims that section 552.108 of the Government Code exempts the two active investigative files from required public disclosure under section 552.108 of the Government Code. Where an incident involving allegedly criminal activity is still under active investigation, any proper custodian of information which relates to the incident may invoke section 552.108. *See* Open Records Decision No. 474 (1987) at 4-5. We agree that the MFCU may withhold the two active files under section 552.108.

As for the two closed files, Mr. Else indicates that both files concern the investigation of incidents involving clients who are medicaid recipients. Section 552.101 of the Government Code exempts from required public disclosure information considered confidential by statutory law. Section 12.003(a) of the Human Resources Code states as follows:

Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize,

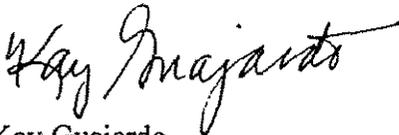
knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [Texas] [d]epartment [of Human Services] or acquired by employees of the department in the performance of their official duties.

Except for purposes directly connected with the administration of the assistance programs administered by the Texas Department of Human Services (the "department"), this statute forbids disclosure of the broadest range of client information, that is, "any information" about clients of assistance programs of the department, including medicaid clients, not just the clients' names and addresses. See Open Records Decision No. 584 (1991). This office applied the predecessor statute to section 12.003 to files of the Department of Public Welfare, now the department, which concerned allegations of mistreatment of a nursing home resident. Open Records Decision No. 166 (1977).

Mr. Else informs us that copies of the files are sent to the department, unless the department already has the information. Thus, the information in the files is either "derived from the records . . . of" or "acquired by employees of" the department. The release of the requested information is manifestly not "for purposes directly connected with the administration of the department's assistance programs." We conclude that the MFCU must withhold any information in the two closed files which concerns medicaid recipients under section 552.101 of the Government Code, as information considered confidential by virtue of section 12.003(a) of the Human Resources Code.

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. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 22295

Enclosures: Submitted documents

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