



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

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

OR96-0451

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35395.

The Office of the Attorney General of Texas (the "OAG") received a request for "any information on a unit called "Sector One" (also known as Mobile Crisis Response Program) which was used to operate as a security force for Colonial Hills and other hospitals." You assert that portions of the requested information are excepted from required public disclosure based on sections 552.101, 552.107(1), 552.108, and 552.111 of the Government Code. You have enclosed marked documents in envelopes labeled B, C, D, and E.

Envelope B contains two letters both of which contain the names of patients of Colonial Hills Hospital. You seek to withhold the patients' names based on the common-law right to privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* Information about a person's emotional or mental distress

is a highly intimate fact about that person that the public has no legitimate interest in. See Open Records Decision No. 343 (1982). We agree that the patient's names on the letters in envelope B are protected from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

One of the letters in envelope B has information about the results of a survey of Colonial Hills Hospital conducted by the Joint Commission on Accreditation of Healthcare Organizations (the "Joint Commission"). You assert that this information is deemed confidential by section 161.032(a) of the Health and Safety Code, which reads as follows:

The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

The Joint Commission is a medical committee for purposes of section 161.032(a). *Humana Hosp. Corp., Inc. v. Spears-Petersen*, 867 S.W.2d 858 (Tex. Civ. App. - San Antonio 1993, no writ). Furthermore, the results of a Joint Commission survey are within the protection of section 161.032(a). See *id.* Accordingly, we conclude that the OAG must withhold from required public disclosure the portion of the second letter in envelope B that refers to results of a Joint Commission survey. Gov't Code § 552.101.

Envelope C contains "PIA Complaint Data Entry" forms. We again conclude that the names of patients at a mental health hospital are protected from required public disclosure under the common-law right to privacy. See Open Records Decision No. 343 (1982).

Envelope D contains three documents pertaining to a Texas Department of Mental Health and Mental Retardation ("TDMHMR") investigation of a complaint about a child's emergency detention in a hospital. You assert that these documents are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 34.08 of the Family Code. In the alternative, you assert that portions of the documents are excepted from disclosure by section 552.101 of the Government Code in conjunction with the common-law right to privacy and by section 552.111 of the Government Code.

The Seventy-fourth Legislature repealed section 34.08¹ and amended the Family Code by adding section 262.201 which reads as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be

¹See Act of April 6, 1995, 74th Leg., R.S., ch. 20, §. 1, 1995 Tex. Sess. Law Serv. 113, 161 (Vernon); Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (Vernon).

disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We agree that, with the exception of a portion of document 2, which we have marked, the three documents in envelope D are "reports, records, communications, and working papers used or developed in an investigation" under chapter 261 of the Family Code. *See* Family Code §§ 261.404 (authorizing Department of Protective and Regulatory Services investigation of reports of abuse or neglect in facility operated by, regulated by, or providing services under a contract with TDMHMR), 262.001 (defining abuse and neglect). Accordingly, section 262.201 deems this information confidential and the OAG must not release this information to the public. Gov't Code § 552.101.

Finally, envelope E contains information about the TDMHMR investigation of Sector One. You assert that this information is excepted from required public disclosure by sections 552.101, 552.107(1) and 552.108. Section 576.005(a) of the Health and Safety Code provides as follows:

Records of a mental health facility that directly or indirectly identify a present, former or proposed patient are confidential unless disclosure is permitted by other state law.

The first document in Envelope E indicates that the information in envelope E was obtained from patient records. This information directly identifies a present, former or proposed patient at a mental health facility. We therefore conclude that section 576.005(a) deems confidential the records in envelope E, with the exception of the first document. This conclusion applies to the warrants and applications for detention in the facility. *See* Health & Safety Code § 573.012(f) (requiring transmittal of warrant and application for emergency detention to facility).

The first document in Envelope E is a letter from TDMHMR personnel to Captain Jack Dean, Texas Rangers, Department of Public Safety. You assert that this document is excepted from required public disclosure by section 552.107(1) of the Government Code. This exception states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception protects only the details of the substance of attorney-client communications that is, only information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). The document at issue contains no attorney advice or opinion. Although you say the document was obtained from a client agency, TDMHMR, we do not believe you have established that the information in the document can be considered a client confidence.

You raise section 552.108 of the Government Code which basically protects the interests of a law enforcement agency when release of requested information would unduly interfere with law enforcement or prosecution. You have not established how the release of the document would cause such interference. Thus, we cannot conclude that the OAG may withhold from the public the first document in envelope E pursuant to section 552.108.

You cite no other law that would make this document confidential in its entirety. However, the document contains the names of two mental health patients. The OAG must not release these names in order to protect the privacy of those individuals. Gov't Code § 552.101; Open Records Decision No. 343 (1982). Thus, with the exception of the patients' names, we conclude that the first document in envelope E is public information.

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 our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 35395

Enclosures: Submitted documents

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(w/o enclosures)