



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 19, 1996

Mr. Kirt E. Moelling
Hinkle, Cox, Eaton, Coffield & Hensley, L.L.P.
P.O. Box 9238
Amarillo, Texas 79105-9238

OR96-0581

Dear Mr. Moelling:

On behalf of the Texas Panhandle Mental Health Authority (the "authority"), 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# 38870.

The authority has received a request for certain records of an investigation into an apparent suicide that occurred on authority premises and the personnel file of a specified authority employee. You have released the personnel file, but claim that the investigation records, which you have submitted to this office for review, are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 576.005(a) of the Health and Safety Code. In the alternative, you argue that sections 552.103 and 552.111 of the Government Code except the records from required public disclosure.

You received the request for information on January 15, 1996. You requested a decision from this office on February 16, 1996. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Sections 552.301 and 552.302 require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

The fact that information is confidential by law is sufficiently compelling to overcome this presumption of openness. Open Records Decision No. 150 (1977).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 576.005(a) of the Health and Safety Code provides that "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." We have examined the documents submitted for our review and conclude that they must be withheld pursuant to section 576.005(a) of the Health and Safety Code.

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 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 Records Division

LRD/rho

Ref.: ID# 38870

Enclosures: Submitted documents

cc: Mr. Randall L. Sherrod
Rhodes & Sherrod, L.L.P.
817 S. Polk, Suite 204
Amarillo, Texas 79101
(w/o enclosures)