



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 30, 1996

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P. O. Box 12668
Austin, Texas 78711-2668

OR96-1336

Dear Ms. Plummer:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40469.

The Texas Department of Mental Health and Mental Retardation (the "department") received an open records request¹ for information concerning an allegation of patient neglect. You contend that the information at issue, submitted as Exhibit 1, is made confidential pursuant to section 552.101 of the Government Code as information made confidential by law. We have considered the exception you claim and have reviewed the documents at issue.

You have submitted to this office for review Exhibit 1, consisting of 47 pages, which you assert is confidential in its entirety under section 48.101 of the Human Resources Code, in conjunction with 25 Texas Administrative Code § 404.15(a) and 40 Texas Administrative Code § 710.12. You also argue that portions of the documents are confidential under section 595.001 of the Health & Safety Code.²

¹Because the requestor specifically seeks the information at issue pursuant to the Open Records Act, we will not elaborate on whether or under what circumstances she would be entitled to these records under rules for complaint or grievance procedures promulgated by the Texas Department of Mental Health and Mental Retardation.

²You also raise additional and different exceptions with regards to some of the information within Exhibit 1 submitted to our office. We will not address any of these additional exceptions, which were neither addressed nor briefed in your letter. See Gov't Code §552.301(b).

Section 552.101 provides an exception from disclosure for "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 48 of the Human Resources Code sets out guidelines for the investigation of abuse, exploitation, or neglect of an elderly or disabled person. Hum. Res. Code § 48.001.

Section 48.101, which generally makes confidential records of investigations of abuse and neglect made under chapter 48 of the Human Resources Code, provides in pertinent part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

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

The submitted documents appear to be "files, reports, records, communications, and working papers" used or developed in an investigation of alleged neglect. Therefore, we agree that Exhibit 1 is protected in its entirety from disclosure pursuant to section 48.101, in conjunction with section 552.101 of the Government Code. Accordingly, we conclude that the department must withhold from required public disclosure the submitted records. Gov't Code § 552.101. However, we note that section 48.101(d) provides:

The department by rule shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

The requestor in this case is the accused. You cite no department rule which "provide[s] for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation . . . of otherwise confidential information relating to that report." However, we note that 25 Texas Administrative Code § 404.15(b)(3) provides that the accused shall be informed of the outcome of the investigation and that, if disciplinary

action is taken, documentary evidence will be provided to the employee as outlined in 25 Texas Administrative Code § 404.10(4).³ Otherwise, we conclude that section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code excepts the requested information from required public disclosure.

Since you have raised other exceptions to disclosure of the requested documents, we will address section 595.001 of the Health & Safety Code which provides that:

Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.

The name of a patient, whose identity is protected under section 595.001, is written on some of the submitted records. We agree that most of the documents in Exhibit 1 are protected, in their entirety, from disclosure under section 595.001. Therefore, the patient's name must be withheld from disclosure. Moreover, section 595.003, which specifies the individuals who may consent to the release of client information, and section 595.004, which provides a qualified right of a client to his or her own information, do not appear to apply here.

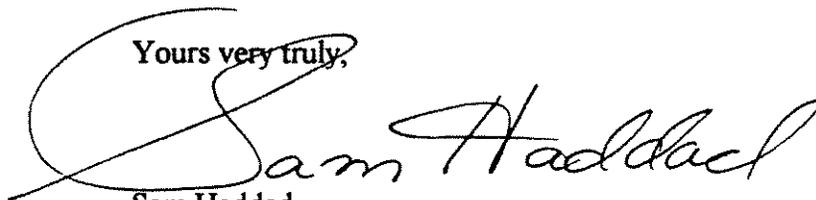
In addition, it appears that the social security numbers of some employees of the department are included in the submitted information. Section 552.117 is applicable to the social security numbers of employees other than the requestor. Sections 552.117 and 552.024 of the Government Code provide that a current or former public employee can opt to keep private his or her home address, home telephone number, social security number, and information that reveals whether that person has family members. You must withhold the social security numbers of those individuals who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987).

We note also that federal law provides for the confidentiality of social security numbers obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994) at 4. Thus, even if employees other than the requestor did not opt to keep their social security numbers confidential under section 552.117, you should determine whether those social security numbers are confidential under federal law prior to disclosure.

³If no disciplinary action was taken with regard to this report, the requestor need only be informed of the outcome of the investigation.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.⁴ 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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref: ID# 40469

Enclosures: Submitted Documents

cc: Ms. Sandra Johnson-Kemp
905 E. Alamo
Brenham, Texas 77833
(w/o enclosures)

⁴As we resolve your request under section 552.101, in conjunction with section 48.101 of the Human Resources Code and section 595.001 of the Health & Safety Code, we need not address your claimed exceptions under 25 Texas Administrative Code § 404.15(a) and 40 Texas Administrative Code § 710.12 at this time.