



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1996

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

OR96-1479

Dear Ms. Plummer:

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# 100394.

The Texas Department of Mental Health and Mental Retardation (the "department") received two requests for various information pertaining to electroconvulsive therapy. You inform us that the department has released to the requestors several responsive documents. However, you assert that the department must withhold from required public disclosure pursuant to section 552.101 of the Government Code two letters from physicians to the department's medical director, as well as the name, birth month, and birth day on an autopsy report. You have enclosed copies of the documents for our review

Section 552.101 of the Government Code excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception covers information deemed confidential by statute. You raise section 611.002(a) of the Health and Safety Code. That provision reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 of the Health and Safety Code defines a "professional" as:

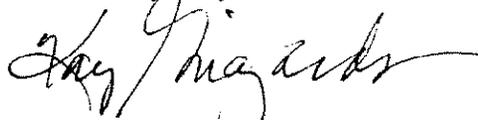
- (A) a person authorized to practice medicine in any state or nation;
- (B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or
- (C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

We believe the two letters at issue are “records of the identity, diagnosis, evaluation, or treatment of a patient that [were] created or maintained by a professional.” Therefore, the information is confidential pursuant to Health and Safety Code section 611.002(a) and may not be disclosed except as provided by Health and Safety Code section 611.004. Health and Safety Code § 611.002(b); *see* Health and Safety Code § 611.004 (authorizing disclosure of confidential information in certain circumstances).¹

The public disclosure of the autopsy report is governed by section 11 of article 49.25 of the Code of Criminal Procedure rather than Health and Safety Code section 611.002(a) or 576.005.² *See Font v. Carr*, 867 S.W.2d 873, 881 (Tex. App. -Houston [1st Dist.] 1993, writ dismissed w.o.j.) (specific statute controls over general statute). Section 11 provides that an autopsy report is a public record. As section 11 contains no exception for information that identifies the decedent, we believe the statute makes public autopsy reports in their entirety. Moreover, the right to privacy lapses upon death. Attorney General Opinion JM-229 (1984). We therefore conclude that the department may not withhold from required public disclosure based on section 552.101 any information on the autopsy report.

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

¹We need not address your claim that the letters are protected from required public disclosure based on Health and Safety Code section 576.005(a) or the common-law right to privacy.

²Health and Safety Code section 576.005(a) provides that the “[r]ecords 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.”

KHG/rho

Ref.: ID# 100394

Enclosures: Submitted documents

cc: Ms. Sandra Boodman
Staff writer, Health Section
The Washington Post
1150 15th Street, NW
Washington, DC 20071
(w/o enclosures)