



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1996

Ms. Barbara H. Owens
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-1817

Dear Ms. Owens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101099.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for six categories of information concerning an allegation of patient neglect. You state that some of the requested information is confidential by law and is excepted from required public disclosure by section 552.101 of the Government Code. You have submitted only those documents you seek to withhold.

You have submitted to this office for review Exhibits A through K, which you assert are confidential in their entirety under section 595.001 of the Health & Safety Code. You also argue that portions of the documents are confidential under section 48.101 of the Human Resources Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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 that

(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.

Exhibits A through C appear to be "files, reports, records, communications, and working papers" used or developed in an investigation of alleged neglect. Therefore, Exhibits A through C are protected by section 48.101 in conjunction with section 552.101 of the Government Code. Accordingly, the department must withhold these documents from required public disclosure. However, section 48.101(d) provides that

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 legal representative of the subject of a report. 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." We note, however, that 25 Texas Administrative Code § 404.15(b)(3) provides that the alleged perpetrator 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). It appears that disciplinary action was taken in this case; thus, the department must release an edited copy of the documentary evidence to the requestor. You have highlighted the information which reveals the identity of the reporter and seek to withhold this information. We agree that you must withhold this highlighted information pursuant to section 48.101(d).

You also contend that section 595.001 of the Health & Safety Code deems the submitted materials confidential in their entirety. Section 595.001 provides that:

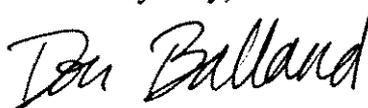
Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003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

As sections 595.003 and 595.004 do not appear to apply here, we believe that some of the submitted materials are protected by section 595.001. It appears that Exhibits D through K are records of the identity and treatment of a patient. We conclude that the department must withhold

Exhibits D through K in their entirety. As for Exhibits A through C, we do not believe that these documents are protected in their entirety by section 595.001. However, the name of a patient, whose identity is protected under section 595.001, is written on most of these records. You have highlighted the patient's name. We agree that you must withhold this information.

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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 101099

Enclosures: Submitted documents

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