



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 9, 1997

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-1343

Dear Ms. Wiegman:

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# 107041.

The Texas Department of Health (the "department") received a request for "a copy of the outcome of my complaint on Baylor Home Care in Dallas, Texas (Crutcher Street)." You assert that the requested information is excepted from required public disclosure based on section 552.101 of the Government Code. We agree.

Section 552.101 excepts from disclosure information that is deemed confidential, including information that is made confidential by statute. You raise section 142.009(d) of the Health and Safety Code. Section 142.009(d) reads as follows:

The reports, records, and working papers used or developed in an investigation made under [section 142.009 of the Health and Safety Code] are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or

- (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency.

Health and Safety Code section 142.009(c) authorizes the department to conduct investigations of complaints regarding the provision of home health, hospice, or personal assistance services. You inform us that Baylor Home Care is a home health agency certified by the department. *See* Health and Safety Code §§ 142.001(11) (defining “home health service”), 142.002 (licensing of home health, hospice, or personal assistance service providers). We have reviewed the submitted information and conclude that it is made confidential by section 142.009(d). We do not believe any of the exceptions to confidentiality in section 141.009(d) apply in this instance. Consequently, the department must not release the information to the requestor.¹ Gov’t Code § 552.101.

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/rho

Ref.: ID# 107041

Enclosures: Submitted documents

cc: Mr. Juan Alaniz
P.O. Box 202
Santa Rosa, Texas 78593
(w/o enclosures)

¹Although the department failed to request an open records decision from this office within the ten-day deadline of Government Code section 552.301, a fact that generally results in a presumption that the requested information is public, in this case, the applicability of a confidentiality provision to the requested information overcomes that presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).