



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 13, 1997

Ms. Laurie Lentz  
Acting Open Records Coordinator  
Texas Department of Mental Health  
and Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-1668

OR97-1821

Dear Ms. Lentz:

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# 108509.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for various information concerning the use of electroconvulsive therapy at the Terrell State Hospital in Terrell, Texas. You state that some documents responsive to the request may be excepted from disclosure based on section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

We agree that portions of the submitted information are protected from required public disclosure based on the common-law right to privacy. *See* Open Records Decision No. 343 (1982). Accordingly, the department must withhold from public disclosure all information that could serve to identify the patients who are the subject of the documents.

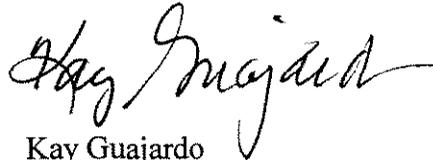
The documents also contain information about a physician's diagnosis and treatment of a patient. Section 5.08(b) of the Medical Practice Act ("MPA"), V.T.C.S. article 4495b, states as follows:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

We believe this provision is applicable to portions of the documents that you highlighted. Consequently, the department must release those highlighted portions only in accordance with the MPA. V.T.C.S. art. 4495b, § 5.08(c); *see* Open Records Decision No. 595 (1991).

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/ glg

Ref.: ID# 108509

Enclosures: Submitted documents

cc: Mr. Andrew Prough  
Deputy Director  
Citizens Commission on Human Rights  
711 West 7th Street, Suite 110  
Austin, Texas 78701  
(w/o enclosures)