

February 2, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

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JOHN CORNYN  
Attorney General

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P.O. Box 12548  
Austin, Texas  
78711-2548

(512) 463-2100  
[www.oag.state.tx.us](http://www.oag.state.tx.us)

Mr. Larry Anderson  
Office of General Counsel  
Texas Rehabilitation Commission  
4900 N. Lamar Boulevard  
Austin, Texas 78751-2399

OR99-0315

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121830.

The Texas Rehabilitation Commission (the "commission") received a request for all documents pertaining to the investigation of the Yellow Rose Shelter. You indicate that you have released some of the responsive documents. You claim, however, that the remaining responsive materials are excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.116 of the Government Code excepts from disclosure

an audit working paper or draft audit report of the state auditor or of another state agency or institution of higher education as defined by Section 61.003, Education Code.

The legislation enacting section 552.116 also defines the term "audit working paper" as

all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and all draft reports or portions thereof.

Act of May 29, 1997, 75<sup>th</sup> Leg., R.S., ch. 1122, § 2, 1997 Tex. Gen. Laws 4266, 4267 (amending Gov't Code 321.001). Section 321.0136 of the Government Code defines "investigation" for purposes of chapter 321 as

an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance.

Gov't Code § 321.0136.

You explain that the Management Audit Division of the commission conducted an investigation after receiving complaints from the shelters' residents. You state that the commission follows statutory requirements and complies with the professional auditing standards established by the profession. However, after reviewing the submitted documents, we do not believe that the information constitutes "audit working paper[s]" as contemplated in Government Code section 552.116 or section 321.001. *See* Gov't Code §§ 321.0131-.016 (defining state audits and investigations); Open Records Decision No. 580 at 9-10 (1990). Accordingly, the commission may not withhold the requested information based on section 552.116 of the Government Code.

We note that some of the submitted information is protected by a right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We have marked the information that must be withheld under section 552.101. *See* Open Records Decision No. 455 (1987).

We also note that the submitted documents contain social security numbers that may be confidential by law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that

any of the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law, enacted on or after October 1, 1990.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 121830

Enclosures: Submitted documents

cc: Mr. Gary Yoho  
Yellow Rose Shelter  
2000 W. Tenth Street  
Dallas, Texas 75208-5734  
(w/o enclosures)