



November 10, 1999

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

OR99-3190

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129085.

The Texas Department of Mental Health and Mental Retardation (the “department”) received a request for documents related to the evaluation of the Mental Retardation Local Authority (“MRLA”) pilot projects. You contend that the consumer surveys are excepted from disclosure under section 552.101 of the Government Code to the extent that the surveys identify clients.<sup>1</sup> We have considered the exception you claim and have reviewed a representative sample of the documents at issue.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You contend that the client-identifying information in the submitted consumer survey is confidential under section 552.101 in conjunction with common-law privacy as well as sections 576.005, 595.001, and 611.002(a) of the Health and Safety Code, and generally under title 25, chapter 414 of the Texas Administrative Code.<sup>3</sup> Section 576.005 of the Health

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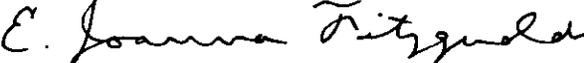
<sup>1</sup>We assume that you have made all other responsive information available to the requestor.

<sup>2</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup>While you initially argued that chapter 403 of title 25 of the Texas Administrative Code prohibits disclosure of client-identifying information, you have since altered your argument in keeping with legislative amendments. Accordingly, instead of raising chapter 403, you now raise the current, analogous provisions in chapter 414.

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 have questions about this ruling, please contact our office.

Sincerely,

Handwritten signature of E. Joanna Fitzgerald in cursive script.

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/

Ref.: ID# 129085

Encl. Submitted documents

cc: Ms. Phyllis B. Schunck  
Clark, Thomas & Winters, PC  
P.O. Box 1148  
Austin, Texas 78767  
(w/o enclosures)

and Safety Code provides that “[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.” The submitted consumer survey appears to be a record of the Texas Board of Mental Health and Mental Retardation, not a record of a mental health facility. Health & Safety Code §§ 531.002(1) (definition of “Board”); Health & Safety Code § 533.0355 (board shall evaluate pilot project at least annually); Health & Safety Code § 571.003(12) (definition of “Mental health facility”). Therefore, section 567.005 does not apply to the consumer survey.

Section 595.001 of the Health and Safety Code provides that “[r]ecords 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 in certain circumstances. Because the consumer survey evaluates an MRLA pilot project and not a person, section 595.001 is inapplicable to the survey.

Section 611.002(a) of the Health and Safety Code states that “[c]ommunications 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.” It is not apparent to us, and you have not explained, how section 611.002(a) would apply to the consumer survey. Thus, we conclude that section 611.002(a) does not make the consumer survey confidential.

The only provision under chapter 414 of title 25 of the Texas Administrative Code that concerns disclosure is section 414.4. That section simply advises that “[s]tate statutory provisions governing disclosure of client-identifying information concerning clients receiving mental health and mental retardation services are contained in §576.005 and Chapter 611 of the Texas Health and Safety Code.” As explained above, neither section 576.005 nor section 611.002 makes the submitted consumer survey confidential.

Finally, you contend that portions of the consumer survey are protected by a right to privacy. Information is protected by the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We agree that information that identifies the client who completed the consumer survey is protected by the common-law right to privacy and, therefore, excepted from disclosure under section 552.101 of the Government Code. We have marked the protected information accordingly. The department must release the remaining information to the requestor.