



January 5, 2000

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

OR2000-0040

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "act"). Your request was assigned ID# 131193.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information concerning George W. Bush, Governor, and other individuals for specified periods. You contend that some of the responsive information is excepted from disclosure under sections 552.101, 552.116, and 552.117 of the Government Code.

We note at the outset that, due to the volume of the information submitted as responsive to the request, we have marked in detail for your guidance only a sample of the records.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have indicated the kinds of information which we believe must be withheld under section 552.101 in conjunction with common law privacy. (Note that unless otherwise indicated, the sample information we have marked for withholding is, in our opinion, protected from disclosure by common law privacy).

You contend that section 595.001 of the Health and Safety Code protects portions of the submitted information. This provision makes confidential, with exceptions which do not appear to be applicable here, "[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." We have marked the kind of information which we believe

must be withheld under section 552.101 in conjunction with section 595.001 of the Health and Safety Code.¹

You also contend that portions of the information are subject to sections 576.005 and 611.002 of the Health and Safety Code. Section 576.005 makes confidential, except as provided by other law, "records of a mental health facility that directly or indirectly identify a patient." We note that the department does not itself appear to be a "mental health facility" under the section. See Health and Safety Code § 571.003 (12) (defining "mental health facility"). We have marked the kinds of information which we believe must be withheld under section 576.005.

Section 611.002 makes confidential "[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." See also Health and Safety Code § 611.001(2) (defining "professional" as "a person licensed to practice medicine," "a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder," or a person the patient reasonably believes to be so licensed or certified. We have marked the kinds of information which must be withheld under section 552.101 in conjunction with section 611.002 of the Health and Safety Code.

You contend that your Exhibit C may be withheld pursuant to section 552.116 of the Government Code. That section permits, in relevant part, withholding "[a]n audit working paper of an audit of the state auditor," including "drafts of the audit report or portions of those drafts." Exhibit C is a draft of a state auditor's report. You may withhold it under section 552.116.

Finally, you advise that the submitted records contain personal information about governmental employees which is protected by section 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. You must withhold this information if, as of the time of the request for the information, the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989), 482 (1987), 455 (1987).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous

¹In some of the sample records we have marked, it is not apparent that the records relate to mental retardation programs, and we have marked the documents under common law privacy or other exceptions. If you determine, however, that a particular record relates to mental retardation programs such as to be within the scope of section 595.001, you should withhold such record in accordance with our markings of other records under that provision.

determination regarding any other records or any other circumstances.

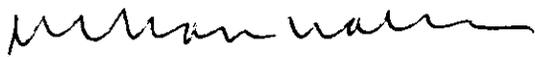
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 131193

Encl. Marked documents

cc: Mr. Mike Lavigne
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(w/o enclosures)