



June 27, 2000

Ms. Nora Bender
Acting Open Records Coordinator
Texas Department of Mental
Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2000-2461

Dear Ms. Bender:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136492.

The Denton State School of the Texas Department of Mental Health and Mental Retardation (the "department") received a request for information related to a sexual harassment investigation. You claim that a portion of the responsive information, which you have submitted to this office for review, is excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 595 of the Health and Safety Code and other provisions of law. You relate that you have provided the requestor those responsive "documents that have been determined to be appropriate for release." You have submitted one email communication to this office for review.¹ You seek to withhold only the information which would tend to identify a client of the department that is contained in that email communication. We have considered the exception you claim and reviewed the submitted information. This opinion letter applies only to the materials that you have submitted for our review.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Records of clients of mental

¹Note that any information responsive to this written request that was not submitted to this office for review is now presumed to be public. Gov't Code §§ 552.301, 552.302. Also note that the identities of purported victims and witnesses in sexual harassment investigations is generally considered confidential. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

retardation programs are subject to section 595.001 of the Health and Safety Code. This section 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 for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.

Section 595.003 provides that the records may be released with the written consent of certain individuals. Section 595.004 provides that the record may generally be released to the person about whom the record was made. Neither of these release provisions appear to apply to the records at hand.

From your representations and our review of the submitted materials we conclude that the portion of the submitted email communication that you have highlighted is a record of a person that is maintained in connection with the performance of a program or activity relating to mental retardation and that no release provision applies to this information. Therefore, this information must be withheld under section 552.101 of the Government Code.

As the above discussion disposes of this request, the other provisions of law that you raise are not discussed. 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 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).

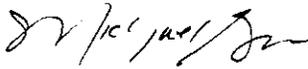
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 136492

Encl Submitted documents

cc: Ms. Sharron Zachry-Piper
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(w/o enclosures)