



July 25, 2001

Ms. Margaret A. Roll
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-3226

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149838.

The Texas Department of Human Services (the "department") received a request for information relating to a former employee. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information that is made confidential by other statutes. You assert that some of the submitted information is confidential under sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in relevant part:

- (a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a) (emphasis added). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” *Id.* at 3. Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See also* Hum. Res. Code § 21.012 (a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs).

You represent to this office that the submitted documents contain client names and other information relating to applicants for or recipients of community care services. You indicate that the requested release of this information would not be for a purpose directly connected with the administration of these community care programs. Based on your representations and our review of the information at issue, we have marked the client information that we conclude is confidential under sections 12.003 and 21.012 of the Human Resources Code. The department must withhold this information from the requestor under section 552.101 of the Government Code.

Section 552.101 also encompasses the common law right to privacy. Common law privacy protects private facts about individuals. Information must be withheld under section 552.101 in conjunction with common law privacy when the information (1) is highly intimate or 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. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The matters deemed to be intimate and embarrassing in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *See* 540 S.W.2d at 683; *see also* Open Records Decision No. 659 at 5 (1999) (listing other types of information that attorney general has held to be protected by a right to privacy). You assert that common law privacy requires the department to withhold certain medical information about the former employee to whom the requested records pertain. We have marked the information that the department must withhold under section 552.101 in conjunction with common law privacy.

You also raise section 552.117 of the Government Code. Section 552.117(1) protects the home address, home telephone number, and social security number of a current or former employee of a governmental body, as well as information that reveals whether a current or former employee has family members, *if the current or former employee requested that this information be kept confidential under section 552.024*. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 1-3 (1987). This information may not be withheld in the case of a current or former employee who made a request for confidentiality under section 552.024 after the request for information was made.

Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that the former employee to whom the requested information pertains elected to keep confidential his home address and telephone number, social security number, and information that reveals whether he has family members. We have marked the information that the department must withhold under section 552.117.

In summary, the requested information that relates to clients of community care programs is confidential under sections 12.003 and 21.012 of the Human Resources Code. The department must withhold that information under section 552.101 of the Government Code. The department also must withhold some of the information that relates to the former employee under section 552.101 in conjunction with common law privacy and under section 552.117. The rest of the requested information must be released.

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).

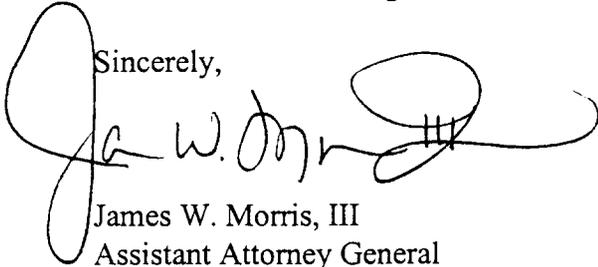
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large loop at the beginning and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 149838

Enc: Marked documents

c: Ms. Elizabeth Espinoza
Texas Department of Human Services
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(w/o enclosures)