



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2009

Mr. Brett Norbraten  
Open Records Attorney  
Texas Department of Aging and Disability Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2009-03885

Dear Mr. Norbraten:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 338160 (DADS ID# 2009SOLEG0001).

The Texas Department of Aging and Disability Services (the "department") received a request for all materials sent by the department to the United States Department of Justice in connection with its ongoing investigation into the state school system. You state you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments received from the requestor's attorney. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's attorney's assertion that the department failed to timely comply with section 552.301(e-1) of the Government Code, which requires the department to send a copy of its comments submitted to this office pursuant to section 552.301(e)(1)(A) to the requestor. We note that section 552.301(e-1) does not prescribe a deadline with which the department must comply. Because the requestor acknowledges she received a copy of the department's comments, we find the department complied with section 552.301(e-1).

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<sup>1</sup>We assume that the 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.

Next, we address the requestor's attorney's assertion that the information at issue is presumed public because the department has already released the information to the United States Department of Justice. The requestor's attorney argues that because the department has previously released the information responsive to the present request, the department may not now treat the information at issue as confidential. Section 552.007 of the Government Code generally prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See id.* § 552.007. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See id.*; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision Nos. 490 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The department argues that the information at issue is confidential under section 552.101 of the Government Code. Thus, regardless of whether the department previously released any of the information at issue in this request, we must address whether the information is made confidential by law and must now be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information other statutes make confidential. Gov't Code § 552.101. The department raises section 552.101 in conjunction with section 595.001 of the Health and Safety Code. Section 595.001 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." Health & Safety Code § 595.001. The department asserts that the information at issue records the identification, diagnoses, evaluation, and treatment of persons in the state school system, which is the primary program relating to mental retardation in the state of Texas, and is therefore subject to section 595.001.

The requestor's attorney argues that section 595.001 does not apply to the information at issue. She cites section 531.002 of the Health and Safety Code, which defines a state school as a "state-supported and structured residential facility operated by the department to provide to clients with mental retardation a variety of services[.]"<sup>2</sup> Health & Safety Code § 531.002(17). The requestor's attorney reasons that the information at issue relates to a state school, and that because a state school is defined as a "facility" under the Health and Safety Code, it cannot be a "program or activity" under section 595.001. We disagree. In this instance, the information at issue does not relate solely to the state school facilities

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<sup>2</sup>We note that pursuant to House Bill 2292 of the 78th Texas Legislature, "the Texas Department of Aging and Disability Services took over operation of mental retardation and state school programs of the former Texas Department of Mental Health and Mental Retardation, community care and nursing home services programs of the former Texas Department Services, and aging services programs of the former Texas Department on Aging."

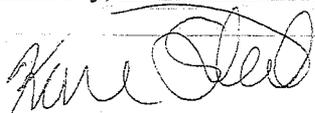
themselves, but rather pertains to specific individuals who are involved in programs and activities that are facilitated by the state schools. This information constitutes records of the identity, diagnosis, evaluation, or treatment of these individuals. Furthermore, we note that in its transfer of duties from the former Texas Department of Mental Health and Mental Retardation to the department in House Bill 2292, the 78<sup>th</sup> Legislature did not make a distinction between "facilities" and "programs" but simply referred to the operation of "state school programs." H.B. 2292, 78th Leg., R.S. (Tex. 2003) (emphasis added). Upon review, we agree that the information at issue falls within the scope of section 595.001 of the Health and Safety Code.

The department asserts that the release provisions set forth in sections 595.003 and 595.004 of the Health and Safety Code are not applicable here. Thus, we find that the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code.<sup>3</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_ori.php](http://www.oag.state.tx.us/open/index_ori.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/sdk

Ref: ID# 338160

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

<sup>3</sup>As our ruling is dispositive, we do not address the remaining arguments.