



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 15, 2009

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

OR2009-04986

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# 340121 (Department #2009SOLEG0018).

The Texas Department of Aging and Disability Services (the "department") received a request for information regarding the death of a named resident at the San Antonio State School. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a federal form CMS-2567, Statement of Deficiencies and Plan of Correction. Federal regulations require the release of this form, provided that (1) no information identifying individual patients, physicians, other medical practitioners, or other individuals shall be disclosed, and (2) the provider whose performance is being evaluated has had a reasonable opportunity to review the report and to offer comments. *See* 42 C.F.R. §§ 401.126, .133; Open Records Decision No. 487 at 5-6

---

<sup>1</sup>We note that although you did not timely raise sections 552.101 of the Government Code, this provision constitutes a compelling reason to withhold information, and we will consider your argument under this exception. *See* Gov't Code §§ 552.301, .302.

(1988).<sup>2</sup> We note that information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, because the signature of the agency representative on the CMS-2567 form indicates that the provider has had a reasonable opportunity to review the report and offer comments, the department must release the submitted form to the requestor. In releasing the submitted form, the department must withhold any information identifying individual patients, physicians, other medical practitioners, or other individuals from the CMS-2567 form under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. 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 for the purposes and under the circumstances authorized under Sections 595.003 and 595.004." Health & Safety Code § 595.001. You state that the information in Exhibit A concerns the identity, diagnosis, evaluation, and treatment of a client at the San Antonio State School. You also explain that the requestor has not demonstrated that he has a right of access to the submitted records under section 595.003 or section 595.004 of the Health and Safety Code. Having considered your representations and reviewed the submitted records, we agree that Exhibit A is confidential under section 595.001 of the Health and Safety Code, and must be withheld under section 552.101 of the Government Code.

In summary, in releasing the CMS-2567 form, the department must withhold any information identifying individual patients, physicians, other medical practitioners, or other individuals under section 552.101 of the Government Code in conjunction with federal law. The department must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code.<sup>3</sup>

---

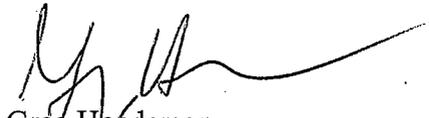
<sup>2</sup>Section 401.133 of title 42 of the Code of Federal Regulations provides that "[t]he statement of deficiencies or report and any pertinent written statements furnished by the institution or facility on the statement of deficiencies shall be disclosed within 90 days following the completion of the survey by the State agency, but not to exceed 30 days following the receipt of the report by [the federal Centers for Medicare and Medicaid Services]." 42 C.F.R. § 401.133(a)(2).

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against its disclosure.

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\\_orl.php](http://www.oag.state.tx.us/open/index_orl.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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID#340121

Enc. Submitted documents

c: Requestor  
(w/o enclosures)