



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

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

OR2009-05680

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# 341526 (DADS #2009SOLEG0026).

The Texas Department of Aging and Disability Services (the "department") received a request for access to and a copy of sexual assault reports and resident mortality records from the Denton State School. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days

¹We assume that the "representative 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.

after receiving the request. *See* Gov't Code § 552.301(a), (b). The department received the instant request for information on February 5, 2009. Although you timely raised section 552.103 of the Government Code, you did not raise section 552.101 until February 25, 2009. Consequently, we find that the department failed to comply with the requirements of section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 630 (1994). Because your claim under section 552.101 can provide a compelling reason to overcome the presumption, we will address the applicability of this exception to the submitted information, along with your timely asserted claim under section 552.103.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 595.001 of the Health and Safety Code, which 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 submitted information contains client-specific information pertaining to persons' identities, diagnoses, and treatments while enrolled in a program for those with mental retardation. You also assert that the requestor has not demonstrated a right of access to the submitted records under section 595.003 or 595.004 of the Health and Safety Code. Based on your representations and our review of the submitted information, we agree that the department must withhold the entirety of the submitted information under section 552.101 in conjunction with section 595.001. As our ruling is dispositive, we need not address your remaining arguments against 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,

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,

A handwritten signature in black ink, appearing to read 'Adam Leiber', written in a cursive style.

Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 341526

Enc. Submitted documents

c: Requestor
(w/o enclosures)