



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 12, 2010

Ms. Barbara H. Owens
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714

OR2010-05077

Dear Ms. Owens:

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# 375654 (DSHS O16951-2010).

The Texas Department of State Health Services (the "department") received a request for the requestor's personnel file. You state you are releasing some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked information pertaining to patients of a mental health facility that the department must withhold under section 552.101 in conjunction with common-law privacy.¹

¹As we are able to make this determination, we need not address your claim this information under section 576.005 of the Health and Safety Code.

You argue that the some of the remaining submitted information is excepted under section 576.005 of the Health and Safety Code. Section 552.101 also encompasses section 576.005, which provides that “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” Health and Safety Code § 576.005. Upon review, we agree and find that the confidentiality provision of section 576.005 applies to some of the remaining information. You do not indicate that any other state law would permit disclosure of this information in this instance. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code. However, we find you have failed to demonstrate how any of the remaining information at issue is subject to section 576.005 of the Health and Safety Code. Therefore, none of this remaining information may be withheld under section 552.101 of the Government Code on this basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 576.005 of the Health and Safety Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 375654

Enc. Submitted documents

cc: Requestor
(w/o enclosures)