



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2010

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

OR2010-05915

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# 377410 (DADS internal tracking number 2010SOLEG0022).

The Texas Department of Aging and Disability Services (the "department") received a request for information pertaining to a personnel investigation at the El Paso State-Supported Living Center (the "center"). You indicate that some responsive information has been released to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutory confidentiality provisions such as 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 records you have marked pertain to the identity, diagnosis, evaluation, or treatment of clients of the center and that the center itself is a "program or activity relating to mental retardation." You also assert that the release provisions set forth

in sections 595.003 and 595.004 of the Health and Safety Code are inapplicable here. Having considered your representations and reviewed the submitted records, we agree that the information you have marked is confidential under section 595.001; we have marked some additional information that is confidential under section 595.001. The department must withhold the marked information under section 552.101 of the Government Code.

You claim portions of the remaining information are confidential under the doctrine of common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

The types of information the court considered highly intimate or embarrassing in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683; *see also Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 551 (Tex. App.—Austin 1983, *writ ref'd n.r.e.*). In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). We note that the fact that a public employee is sick is public information, but specific information about illnesses is excepted from disclosure. *See* ORD 470 at 4.

Upon review, we agree that some of the remaining information is protected under common-law privacy; therefore, the department must withhold the information we have marked on that basis under section 552.101 of the Government Code. However, we find none of the remaining information you have marked under common-law privacy is highly intimate or embarrassing and of no legitimate public interest; thus, none of it may be withheld under section 552.101 in conjunction with common-law privacy.

The remaining information includes e-mail addresses that you claim are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The personal e-mail addresses in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which you

have marked, must be withheld under section 552.137 unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).¹

We note that some of the remaining information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.³ *See Gov't Code* §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it was made. *See Open Records Decision No. 530 at 5 (1989)*. We note, however, that work telephone numbers are not excepted from disclosure by section 552.117. Accordingly, to the extent the telephone numbers you have marked are the employees' home telephone numbers, the department must withhold the marked telephone numbers under section 552.117, provided that the employees at issue timely elected to keep their personal information confidential. However, the department may not withhold this information under section 552.117 if the marked information is a work telephone number or if the employees at issue did not make a timely election to keep their information confidential.

In summary, the department must withhold under section 552.101 of the Government Code (1) the information you have marked and the additional information we have marked in conjunction with section 595.001 of the Health and Safety Code and (2) the information we have marked in conjunction with common-law privacy. The department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. To the extent the telephone numbers you have marked are the employees' home telephone numbers, the department must withhold the marked telephone numbers under section 552.117 of the Government Code, provided that the employees at issue timely elected to keep their personal information confidential; otherwise, this information must be released. The remaining submitted information must be released to the requestor.

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

³We note that section 552.024(c)(2) of the Government Code now allows a governmental body to redact certain personal information pertaining to employees who properly elected to keep their information confidential without the necessity of requesting a ruling from this office. *See Gov't Code* § 552.024(c)(2).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 377410

Enc. Submitted documents

c: Requestor
(w/o enclosures)