



Office of the Attorney General

State of Texas

November 19, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Pat D. Westbrook
Executive Director
Texas Commission for the Blind
P. O. Box 12866
Austin, Texas 78711

OR92-656

Dear Mr. Westbrook:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17186.

The Texas Commission for the Blind (the "commission") has received a request for information relating to an investigation it conducted in 1992. Specifically, the requestor seeks information regarding:

(1) any investigatory report compiled by officials of the Commission's State Headquarters and/or Lubbock Regional Headquarters, in late July and/or early August, in connection with complaints voiced by clients of the Abilene District Office of the Commission [and]

(2) the change in the counselor's position in the Abilene District Office of the Commission, including, but not limited to, all public information in any letter of resignation submitted by the long-time counselor in the Abilene office, or from any notice of termination given by the commission to same counselor, as well as any reassignment of same counselor to another position within the agency.

You have submitted the requested documents to us for review, and you ask whether the commission must withhold the requested information under section 3(a)(1) of

the Open Records Act in conjunction with state and federal statutes and regulations.¹

Section 3(a)(1) protects from required public disclosure "information deemed confidential by law, either Constitutional, statutory or by judicial decision." Section 91.059 of the Human Resources Code provides:

Except for purposes directly connected with the administration of the vocational rehabilitation program and according to commission rules, *no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services* that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of his or her official duties. [Emphasis added.]

The agency regulation regarding confidentiality of records provides, in pertinent part:

All personal information regarding applicants for services and recipients of services that is furnished to and gathered by the commission in the course of the administration of commission programs will be held confidential in accordance with state and federal laws.

40 T.A.C. § 161.5(a).² Agency regulations provide for exceptions to confidentiality, e.g., with the consent of the person to whom the information pertains and for

¹An employee data sheet was included with the submitted documents. The requestor has advised this office that the sheet is not within the scope of his request. Accordingly, we do not consider its availability under the Open Records Act here.

²The applicable federal regulation provides that "[t]he State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names." 34 C.F.R. § 361.49(a); *see also Id.* 361.49(b) (information containing identifiable personal information may not be shared with entities with no official responsibility for administration of the program). The state rule, 40 T.A.C. § 161.5, uses the phrase "client information" as well as the phrase "personal information" to describe the protected information. According to that rule, such information includes "list of names

specified research purposes. *Id.* § 161.5(d), (g). However, none of the regulatory exceptions apply here.

We have examined the documents submitted to us for review. While some of the documents contain protected "personal or client information," that is, "information concerning an applicant for or recipient of vocational rehabilitation services," the great part of the information concerns a commission employee's work performance. We do not believe this kind of employee information was intended to be protected from disclosure by section 91.059 of the Health and Safety Code. For your convenience, we have marked the "personal or client information" that you must withhold pursuant to section 91.059. The remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-656.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 17186

cc: Mr. Jerry Daniel Reed
Senior Staff Writer
Abilene Reporter-News
P. O. Box 30
Abilene, Texas 79604

and addresses, records of agency evaluations, reports of medical examinations and treatment, and financial information." See 40 T.A.C. § 161.5(b).