



Office of the Attorney General  
State of Texas

December 16, 1992

DAN MORALES  
ATTORNEY GENERAL

Mr. Jeffrey J. Horner  
Bracewell & Patterson  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR92-694

Dear Mr. Horner:

On behalf of the Houston Independent School District (HISD), you request a decision from the Attorney General under the Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17549.

The district received an open records request for

[a]ll documents detailing actual complaints from HISD employees or their relatives regarding SANUS New York Life or other health care benefit programs. Documents may delete the identity of the patients for privacy reasons.

You are concerned that releasing the requested documents with the deletion of only the names is not sufficient to protect the privacy interests of the patients involved. You suggest that other identifying information must also be deleted to protect the privacy of those patients.

We agree that you must withhold any other identifying information on documents that contain private information, that is, information protected by the common-law right to privacy recognized under section 3(a)(1) of the Open Records Act. You may not withhold identifying information on those documents that do not contain information protected by a common-law right to privacy.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This exception applies to information made confidential by common-law rights of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668

(Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). One branch of the common-law right to privacy, the public disclosure of private facts, is recognized as a basis for exception from required disclosure under section 3(a)(1) of the Open Records Act. *Id.* Information may be withheld from disclosure under this branch of common-law privacy if it meets two requirements: 1) it contains highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities, and 2) it is of no legitimate concern to the public. *Id.* at 683.

Financial and medical information appear on the documents you submitted for our inspection. Financial information relating to an individual is ordinarily protected by common-law privacy. Open Records Decision No. 600 (1992) at 9. However, financial information about a transaction between an individual and a governmental body is not so protected since there is a legitimate public interest in such information. *Id.* Thus, while information about an employee's decision to participate in a group insurance program funded in whole or in part by the state is not protected by common-law right to privacy, *see id.*, information about an individual's medical bills is protected by common-law privacy. *See* Open Records Decision No. 373 (1983). Accordingly, you must withhold the identifying information that appears on the medical bills, but not that which appears on documents which reveal an employee's decisions about participation in the group insurance program.

Whether medical information constitutes private information under the common law depends on the nature of the illness. Open Records Decision No. 600 at 7. Generally, information about a person's health raises a common-law privacy claim if the information relates to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions, seizures, or emotional/mental distress. *See* Open Records Decision No. 262 (1980) at 2. Some of the complaints contain information about psychiatric treatment which constitutes private medical information. On these, you must delete all identifying information. Additionally, two documents, a record of medical treatment signed by a physician and a copy of a prescription, are protected from disclosure in their entirety by the Medical Practices Act, V.T.C.S. art. 4495b, § 5.08(b). We have marked the documents accordingly.

You also raise a confidentiality provision in the Americans with Disabilities Act (the ADA), 42 U.S.C. ch. 126. Section 12112(d)(3) of that act states

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if --

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that --

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

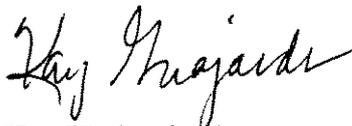
This provision accords confidentiality to medical information -- which must be maintained on separate forms and in separate files -- obtained by an entity covered by the ADA during the medical examination of a new employee. Since the medical information at issue here appears on complaints of HISD employees about a health insurance company, it is not part of a record of medical information obtained during an employee's medical examination. Thus, the confidentiality of this provision does not apply to the requested information.

In summary, we have marked all documents in which you must withhold identifying information in order to protect the patient's common-law right to

privacy. If the document contains no information protected under the common-law right to privacy, you may not withhold the identifying information. You may withhold the names of the patient involved on all documents since the requestor did not request that information.

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 OR92-694.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/lmm

Ref.: ID# 17549

cc: Mr. Wayne Dolcefino  
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