



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-787

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 27432.

The Texas Department of Human Services (the "department") has received a request "for copies of all records created or maintained by the [department] pertaining to the survey of the Villa Northwest Convalescent Center located in Houston, Texas[,] commencing on May 26, 1994[,] and exiting on June 6, 1994" You believe that section 552.101 of the Government Code, incorporating section 242.127 of the Health and Safety Code, renders the requested records confidential. You also believe that section 552.103(a) of the Government Code authorizes the department to withhold the requested information.

As a threshold matter, we note that the department received the request letter on June 16, 1994, but it did not seek an opinion of this office until July 7, 1994. Thus, you failed to seek a decision within ten calendar days after receiving the request for information, as section 552.301 of the Government Code requires. Failure timely to request the attorney general's decision results in a presumption that the requested information is public, Gov't Code § 552.302, and a governmental body may overcome this presumption only by showing that the information is confidential or that an exception designed to protect the interest of a third party is applicable. See Open Records Decision No. 552 (1990) at 1. Section 552.101, which you have raised, pertains to confidential information. Section 552.103, on the other hand, is not designed to protect confidential information or third party interests. We will, therefore, proceed to consider your request for an open records decision, but we will consider only whether section 552.101 excepts the requested information from required public disclosure.

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." Section 552.101 thus incorporates other statutory provisions that make specified documents confidential. Section 242.127 of the Health and Safety Code provides confidentiality for "[a] report, record, or working paper used or developed in an investigation made under this subchapter"

As this office stated in Open Records Letter No. 94-392 (1994) at 4, "[b]y providing confidentiality for any 'report, record, or working paper used or developed in an investigation made under this subchapter,' we believe the legislature intended to protect all information that is related to an investigation of alleged abuse and neglect at a nursing facility and that a department investigator accumulates or creates during the course of the investigation." We therefore concluded that "section 552.101 of the Government Code, in conjunction with section 242.127 of the Health and Safety Code, requires the department to withhold attachments to investigation reports created pursuant to chapter 242 of the Health and Safety Code." *Id.*; accord Open Records Letter No. 94-496 (1994) at 2.

Accordingly, we conclude that the department may withhold the information requested here, to the extent it consists of attachments to an investigation report prepared under chapter 242, subchapter E of the Health and Safety Code. However, the attachments must relate to the investigation, and a department investigator must have accumulated or created the attachments during the course of an investigation. All of the documents you submitted for our review, *see* Gov't Code § 552.303 (requiring governmental body that requests open records decision from attorney general to supply attorney general with "the specific information requested"), appear to be related to the department's investigation of the Villa Northwest Convalescent Center. You have not informed us whether the documents are attachments to the investigation report, nor whether the investigator accumulated or created all of the submitted documents during the course of the investigation. Before it may withhold or release the requested information, the department must make these findings.¹

We further conclude that attachments to an investigation report are confidential as a matter of law. Thus, the department need not request an open records decision from this office when it receives a request for this kind of information. In every case, however, the department must ascertain that the requested information consists of attachments to an investigation report prepared under chapter 242, subchapter E of the Health and Safety Code. Moreover, the department must determine that the attachments relate to the investigation and that a department investigator accumulated or created the attachments during the course of an investigation.

¹Because these determinations involve the resolution of fact questions, we cannot resolve them. *See* Open Records Decision No. 426 (1985) at 5.

Case law and prior published open records decisions resolve your request; we are therefore resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LRD/rho

Ref: ID# 27432

Enclosures: Submitted documents

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