



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1996

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-0828

Dear Mr. Casas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36857.

The City of San Antonio (the "city") received a request for information relating to an investigation performed by the city's voluntary Equal Employment Opportunity Program. This office reviewed the documents at issue and issued Open Records Letter No. 95-1192 (1995) pertaining to all the documents except the categories of information possibly implicating the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12101 *et seq.* We then concluded that the issue warranted a more thorough analysis than is normally possible in the limited scope of an informal letter and informed you that the information could be withheld pending the issuance of Open Records Decision No. 641 (1996).¹

With the issuance of Open Records Decision No. 641 (1996), we now address the two categories of information we did not address in Open Records Letter No. 95-1192 (1995).

Although you did not raise any ADA claims, the Office of the Attorney General will consider mandatory exceptions such as section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Information is confidential by law when it is made confidential by federal statute or administrative regulations enacted pursuant to statutory authority. Open Records Decision No. 476 (1987) at 5. If the records at issue are confidential under section 552.101 in conjunction with title I of the ADA, the records may be released only in accordance with provisions of that federal law. *Id.*

¹ Referred to as RQ# 753 in Open Records Letter No.95-1192 (1995) at 3.

Title I prohibits discrimination in employment and limits the extent to which an employer subject to the ADA may require applicants and employees to provide information concerning disabilities. We note that the United States Equal Employment Opportunity Commission (the "EEOC") has, pursuant to its statutory authority, *see* 42 U.S.C. § 12116, promulgated regulations to provide guidance in interpreting title I of the ADA, *see* 29 C.F.R. pt. 1630. This office has previously relied upon the EEOC regulations in construing title I of the ADA. Attorney General Opinion DM-124 (1992). The ADA prohibitions include restrictions as to the use and disclosure of medical examination and medical inquiry information. *Id.* § 12112(d)(1). These restrictions vary depending on whether an applicant is in the job application phase, the conditional job offer phase, or has been hired as an employee. *Id.* § 12112(d)(2)-(4).

You submitted to this office for review documents which evidence two categories of information titled "HANDICAP" and "PHYS LIM." These categories could reveal different types of medical conditions, including physical handicaps and chronic diseases.² Both of the categories at issue reveal information about an individual's medical history and medical condition.³

The city, an employer subject to title I of the ADA, *see* 42 U.S.C. § 12111(5), collects and maintains the records at issue. The categories of information reveal information about applicants, and, medical conditions and medical histories. The ADA provides that information about medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as confidential medical records. Since the information on these forms is made confidential under section 12112(d) of the ADA, it may be released only as provided under that section. None of the information provided by the city appears to place the inquiry within the exceptions to confidentiality.⁴ Open Records Decision No. 641 (1996) at 6-7. The city must withhold the marked provisions within the documents provided.

²You have not indicated that this information is being collected pursuant to federal regulations under the Rehabilitation Act, which allow collection of information about disabilities at the application stage. *Id.* § 1630.1. We note that the Rehabilitation Act provides for consistency with ADA standards. *See* 29 U.S.C. §§ 791(g) (providing that standards used to determine employment discrimination are same as ADA employment provisions), 793(e) (providing that complaints be dealt with in manner that prevents imposition of conflicting standards under Rehabilitation Act and ADA), 794(d) (providing that standards for employment discrimination are same as ADA employment provisions).

³The information at issue was collected from applicants, some of whom are current and former City of Mansfield employees, so that the information at issue concerns both applicants and former or current employees. Information gathered prior to the 1990 effective date of the ADA statute would have to be reviewed on a case by case basis, but the documents submitted for review do not reveal their date of original compilation. This letter does not address the confidentiality of medical records under state law. It also does not address the confidentiality of information collected prior to the effective date of the ADA or information collected outside the scope of the ADA provisions.

⁴Section 12112(d)(3)(B) of title 42 of the United States Code provides that information regarding medical condition or medical history may be disclosed as follows: (i) supervisors and managers maybe 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 Act shall be provided relevant information on request.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID#36857

Enclosures: Marked submitted documents

cc: Ms. Ling Yin Liu
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(w/o enclosures)

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