



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 3, 1996

Mr. C. Ed Davis
Deputy Director for Legal Services
Texas Department of Protective and Regulatory Services
P.O. Box 149030
Austin, Texas 78751

OR96-1073

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39985.

The Texas Department of Protective and Regulatory Services (the "department") received a request for:

1. Records pertaining to Odyssey Harbor, Inc. that show the facility's general record of compliance with state regulations based on regular and/or random visits by DPRS inspectors and/or investigators from January 1993 through present.
2. Records showing amount of state funds paid to Odyssey Harbor, Inc. annually since 1993 for care of residents referred by Child Protective Services and/or DPRS.
3. Records of all complaints filed against Odyssey Harbor, Inc. since and including January 1992 to the present. This should include the complaints themselves plus investigator reports, documents or investigative findings/conclusions and details of state disciplinary action taken in cases of noncompliance.
4. Records detailing any corrective action plans implemented at Odyssey Harbor. This should include any center wide corrective action plans or plans involving individual employees. This should list dates when such plans started and ended and follow up reports discussing how well such plans worked.

5. Records pertaining to Odyssey Harbor, Inc. that show conclusions reached as a result of investigations that uncovered child abuse and neglect at the facility from January 1994 through the present.

6. Records pertaining to Odyssey Harbor, Inc. that outline disciplinary recommendations and reprimands resulting from child abuse and neglect since January 1994.

7. Records detailing any corrective action plans implemented at Odyssey Harbor that arose from instances of child abuse and neglect since January 1994.

8. Records pertaining to staff psychiatrist Dr. L. Varga, specifically the hours or days the psychiatrist spent at Odyssey Harbor, the amount of time the psychiatrist spent out of state and consulted by long distance; and the names of other staff psychiatrists and their availability.

You state that the department has forwarded to the requestor the information requested in number 1, with the exception of information from January, 1993 through June, 1993. You state that, upon receipt of payment, the department will release to the requestor additional information, including information responsive to request number 2. You also state that the department believes the information responsive to request number 8 to be public information that the department will release promptly, if the department has any responsive information in its possession. You claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

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. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report;

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or

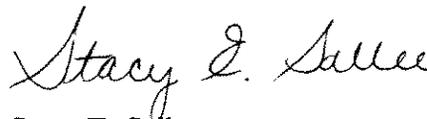
developed in an investigation under this chapter or in providing services as a result of an investigation.

You characterize the records submitted to this office for review as coming within five general categories: (1) child abuse and neglect reports; (2) reports classified as abusive behavior; (3) abuse and neglect records with potential criminal prosecution; (4) children's individual clinical records; and (5) additional records that fall within one of the other four categories. You state that the department is required to release general information concerning a residential treatment facility, such as Odyssey Harbor, and its compliance history to the public so that the public is aware of the facility's status. You claim that there is "no clear way to distinguish child abuse and neglect information from facility monitoring information."

In Open Records Letter No. 96-0552 (1996), this office ruled on the first four categories of documents and concluded that, pursuant to section 261.201 of the Family Code, the department was required to withhold the requested information. *See* Open Records Decision No. 587 (1991) (information maintained in licensure records of Department of Human Services does not remove information from protection of predecessor to section 261.201). We conclude that the same is true for the documents falling within category 5. Therefore, the department must withhold all of the documents submitted to this office under section 552.101 of the Government Code.

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39985

Enclosures: Submitted documents

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