



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 28, 1997

Ms. Kate Herrington
Open Records Coordinator
Ms. Barbara H. Koonce
Attorney, Legal Services
Texas Department of
Mental Health and Mental Retardation
P. O. Box 12668
Austin, Texas 78711-2668

OR97-0178

Dear Ms. Herrington and Ms. Koonce:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. We assigned your requests ID# 103163 and ID# 103208.

The Texas Department of Mental Health and Mental Retardation (the "department") received two related requests for any waiting lists that the department maintains and "the names, addresses and phone numbers of the guardians, family representatives, and other authorized representatives of the six persons who are waiting for placement in the Concho Valley area." You refer to section 552.002 of the Government Code and inform us that the department does not have all of the documents requested, and contend that a "separate governmental entity may be in possession of the[se] requested documents." Therefore, you assert the department is not required to compile these documents and provide them to the requestor.¹ Alternatively, you also assert that the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code.

Section 552.002(a) defines the term "public information" to include information that is "collected, assembled, or maintained . . . (1) by a governmental body; or (2) for a governmental body

¹You also state that "[the entity] which may be in possession of the requested information is in litigation with a client of the requestor and therefore, that [entity] may be able to raise Section 552.103" of the Act to withhold release of the information.

and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a) (emphasis added). We understand that the information responsive to one of the requests is “collected, assembled, or maintained” by MHMR Services for the Concho Valley (“Concho Valley”). The requestor informs us that the department has access to some of the requested information “[b]y virtue of its authority to designate MHMR Services for Concho Valley” as a community center. With regard to the other request for information, you state that most of the documents are in the possession of the locally-governed community centers. You claim that the documents are not created or maintained for the department, and that the department does not have a right of access to the documents. Based on your assertions, we conclude that the department is not required to obtain the documents at issue from the local community centers in order to comply with the open records request. Therefore, to the extent that the requested information is not in the possession of the department, section 552.002 does not require department to obtain the documents.

We next address whether section 552.101 protects any of the information which is in the possession of the department. Section 552.101 of the Government Code excepts from required public disclosure “information that is confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses both common-law and constitutional privacy. Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440

(1986), 393 (1983), 339 (1982). We agree that information that identifies a psychiatric or mental patient is protected from disclosure based on the common-law right to privacy, as it is a highly intimate fact about that person, which the public has no legitimate interest in. *See* Open Records Decision No. 343 (1982). Therefore, the information the department possesses must be withheld from required public disclosure pursuant to section 552.101.

We are resolving this matter with this 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 may 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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref.: ID# 103163 and ID# 103208.

Enclosures: Submitted documents

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(w/o enclosures)

