



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1997

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-0640

Dear Ms. Wiegman:

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# 104688.

The Texas Department of Health (the "department") received an open records request for documents relating to Life Resource Community Psychiatric Center that pertain to any investigation, report, or communication involving facility employees or agents engaged in the abuse, neglect, endangerment, or other mistreatment of any patient, or any other violation of law. You have submitted to this office for review the responsive documents, which you contend are confidential under section 48.101 of the Human Resource Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.¹

Chapter 48 of the Human Resource Code pertains to protective services for elderly and disabled persons. Section 48.082 of the Human Resource Code provides in pertinent part:

(a) If a person has reasonable cause to believe that an elderly or disabled person has been abused, exploited, or neglected in a facility operated, licensed, certified, or registered by a state agency other than the Texas Department of Mental Health and Mental Retardation, the person shall report the information to the state agency that operates,

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

licenses, certifies, or registers the facility for investigation by that agency.

.....

(c) A state agency that receives a report under this section shall make a thorough investigation promptly after receiving a report that an elderly or disabled person has been or may be abused, exploited, or neglected in a facility operated, licensed, certified, or registered by the agency.² The primary purpose of the investigation is the protection of the elderly or disabled person.

(d) The state agency shall prepare and keep on file a complete written report of each investigation conducted by the state agency under this section. [Footnote added.]

Section 48.101 of the Human Resource Code provides in pertinent part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

The documents you have submitted to this office for review clearly constitute “files, reports, records, communications, and working papers used or developed in an investigation” under chapter 48 of the Human Resource Code. Further, you have not advised this office, nor is it apparent from the open records request, that the requestor has a special right of access to any of these records pursuant to section 48.101(d). We therefore conclude, based

²For purposes of this ruling, we assume that the Life Resource Community Psychiatric Center is “a facility operated, licensed, certified, or registered by” the department.

on the facts before us, that the department must withhold these records in their entirety pursuant to section 552.101 of the Government Code.³

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/glg

Ref.: ID# 104688

Enclosures: Submitted documents

cc: Mr. Scott Newar
550 Fannin, Suite 1147
Beaumont, Texas 77701
(w/o enclosures)

³We note that although the department did not request an open records decision from this office within the ten days following the department's receipt of the open records request, the confidentiality conferred on these records by section 48.101 constitutes a "compelling" reason for non-disclosure that overcomes the legal presumption that the records are public information. See Gov't Code § 552.302; Open Records Decision No. 150 (1977).

