



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1997

Ms. Eileen C. Begle
Assistant County Attorney
County of Harris
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR97-2323

Dear Ms. Begle:

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# 109671.

The Harris County Juvenile Probation Department (the "department") received a request for a former employee's personnel file and any internal investigation files that contain information concerning the incident for which the employee was terminated. You state that the requestor has been given access to his personnel file. However, you claim that several documents from the investigation file are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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. Exhibit B contains three medical records prepared by or under the supervision of a physician. You cite section 611.02(a) of the Health & Safety Code, for the proposition that these medical records are confidential by law. We note that the provisions of chapter 611 of the Health & Safety Code relate solely to psychological records. The records at issue do not relate to the treatment of any mental or emotional disorder. It appears that the appropriate statute is section 5.08(b) of the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. Section 5.08(b) of the MPA provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

As the documents at issue are medical records generated by or under the supervision of a physician, the documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See § 5.08(c), (j).

Exhibit C contains several grievances and incident reports prepared by juveniles housed at the department's Boot Camp. You contend that this information is confidential pursuant to section 58.007 of the Family Code and thus excepted from disclosure by section 552.101 of the Government Code. Section 58.007 states, in part:

- (b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of a court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under this title are open to inspection only by:
 - (1) the judge, probation officers, and professional staff or consultants of the juvenile court;
 - (2) a juvenile justice agency as that term is defined by Section 58.101;
 - (3) an attorney for a party to the proceeding;
 - (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
 - (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

It does not appear that any of the exceptions apply here. Therefore, we conclude that the department must withhold the documents from required public disclosure under section 58.007 of the Family Code in conjunction with section 552.101.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

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Enclosures: Submitted documents

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(w/o enclosures)

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