

January 13, 1999

Ms. Tina Plummer
Texas Department of Mental
Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR99-0099



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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P.O. Box 12548
Austin, Texas
78711-2548

(512) 463-2100
www.oag.state.tx.us

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121019.

The Department of Mental Health and Mental Retardation received a request for all lists, reports and/or records pertaining to notifications to Kerrville State Hospital of the proposed QSO record samplings to be reviewed and inspected by QSO monitors in compliance with the RAJ lawsuit for the years 1995, 1996, 1997, and copies of all lists, reports, and/or records reflecting which records were actually monitored during such site visits.

You claim that the responsive information consists of Kerrville State Hospital Site Visit sample reports, submitted as Exhibit A. You argue that the information which identifies any patients or clients of the hospital must be withheld under section 552.101 of the Government Code. You have highlighted the information you seek to withhold. We have considered the exception you claim and have reviewed the documents submitted as Exhibit A.

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 common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, 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 at 1 (1992). We find that the information you have highlighted, information identifying the hospital's patients, must be withheld in this instance under a right of privacy. *See, e.g.*, Open Records

Decision No. 470 (1987) (illness from severe emotional and job-related stress). The remaining information in the submitted documents must be released.

Because we resolve this matter under common-law privacy, we need not consider your additional statutory arguments. 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,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 121019

Enclosures: Submitted documents

cc: Mr. Donald P. Dorsey
Dorsey-Shurley, L.L.P.
222 Sidney Baker South, Suite 500
Kerrville, Texas 78028
(w/o enclosures)