



May 13, 1999

Mr. William T. Buida
Supervising Attorney
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR99-1323

Dear Mr. Buida:

By letters dated April 14 and 28, 1999, you submitted to this office information requested in conjunction with Open Records Letter No. 99-1009 (1999). Your letters were assigned ID# 125897.

The Texas Department of Human Services (the "department") received a request for the investigative file concerning a specific nursing facility administrator. You argued that the residents' identities and complainants' statements were excepted from disclosure under section 552.101 of the Government Code in conjunction with various statutes, the common-law right to privacy, and the informer's privilege. We informed you that we needed additional information from you in order to address the applicability of section 12.003 of the Human Resources Code to the information at issue. Because we did not receive the additional information, we did not issue an opinion as to the applicability of section 12.003, but cautioned you not to release information deemed confidential by law. ORL 99-1099 at 2-3.

You now submit the additional information we requested, a list of residents who are or were Medicaid recipients. You inform us that "[b]ecause the department is prohibited by law from releasing the identity of Medicaid applicants and recipients, the identity of the persons noted on the list sent with my April 14, 1999 letter will be deleted before the information is made public." You did not resubmit the information at issue to this office, and you have not asked us to rule on the release of that information. Nevertheless, we note that section 12.003 provides:

- (a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(b) An offense under this section is a Class A misdemeanor.

Hum. Res. Code § 12.003 (emphasis added). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is deemed confidential by section 12.003. *See* Hum. Res. Code § 21.012; Open Records Decision No. 166 (1977).

Please note that the distribution of confidential information is a criminal offense under the Public Information Act. Gov’t Code § 552.353. The department may not rely on this ruling as an affirmative defense for releasing any confidential information. If you have any questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 125897

encl. Submitted document

cc: Mr. Breck Harrison
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(w/o enclosures)