



September 9, 2002

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2002-5035

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168217.

The Texas Department of Human Services (the "department") received a request for documents maintained by the department that were prepared by the Willows Development Center during 2000, and for progress notes prepared by the Willows Development Center (the "Willows") that pertain to the care of a named individual between September 11, 2000 and September 21, 2000. You state that the requested progress notes have been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that the submitted sample includes several documents that were prepared by the department. We further note that request only seeks "documents maintained by [the department] which were prepared by any agent, employee, or representative of [the Willows]." Therefore, we determine that the documents in the submitted sample that were

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

prepared by the department are not responsive to the present request. Accordingly, we do not address the public availability of documents prepared by the department in the present ruling.

Next, we note that the submitted sample includes information that is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information consists of completed investigations. Therefore, as prescribed by section 552.022, the department must release such information unless it is confidential under other law.

You contend that the information at issue is confidential under section 552.101 of the Government Code in conjunction with chapter 252 of the Health and Safety Code and chapter 90 of title 40 of the Texas Administrative Code. 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. Chapter 252 of the Health and Safety Code governs the licensing of an intermediate care facility for the mentally retarded (an "ICF/MR facility"). Under section 252.008, the department shall adopt rules related to the administration and implementation of chapter 252. Chapter 90 of title 40 of the Texas Administrative Code sets forth the adopted rules governing ICF/MR facilities. Under section 90.212 of title 40, an ICF/MR facility has a duty to investigate reports of abuse, neglect, and exploitation of persons receiving services at the facility. Furthermore, the facility has a duty to report abuse or neglect to the department. Section 90.212(f) of title 40 provides in pertinent part:

- (3) The reports, records, and working papers used by or developed in the investigative process and the resulting final report regarding abuse, neglect, and exploitation are confidential and may be disclosed only as provided under law. Information discussed during deliberations of abuse, neglect, and exploitation investigations may not be discussed outside the purview of those deliberations with the exception of the concerns and recommendations which are to be addressed by the appropriate persons.

You inform us that the Willows is an ICF/MR facility. Furthermore, you inform us that the documents at issue relate to abuse and neglect investigations conducted by the Willows and reported to the department. Thus, we determine that the documents at issue here consist of records of investigations completed by the Willows pursuant to its duty to investigate and report abuse or neglect under section 90.212 of title 40 of the Texas Administrative Code. Accordingly, we determine that the department must withhold the documents under section 552.101 of the Government Code in conjunction with section 90.212(f) of title 40 of the Texas Administrative Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "DRS" followed by a stylized flourish.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 168217

Enc: Submitted documents

c: Ms. Maryann "George" Bailey  
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(w/o enclosures)