



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2015-19839

Dear Mr. Norbraten:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 581949 (DADS #2015SOLEG0122).

The Texas Department of Aging and Disability Services (the "department") received a request for a specified video recording at the Lufkin State Supported Living Center. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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." Gov't Code § 552.101. Section 552.101 encompasses section 595.001 of the Health and Safety Code, which provides:

¹You acknowledge the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request), (e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the department's violation of section 552.301 in requesting this decision.

Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by [chapter 595 of the Health and Safety Code], subject to applicable federal and other state law.

Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 3.1469, 2015 Tex. Sess. Law Serv. 637 (Vernon) (to be codified as an amendment to Health & Safety Code § 595.001) (effective immediately); *see also* Health & Safety Code § 591.003(7-a) (defining “intellectual disability”). You state the submitted information consists of video recordings from a state-supported living center, which we understand constitutes an intellectual disability program. You contend these recordings reveal the identities of individuals who receive treatment at the center. Although you state the requestor is the guardian of one of the individuals in the submitted recordings, you inform us the department is not able to sever or otherwise edit the video recordings; thus, we understand you to assert the department does not have the technological capability to redact images of the other individuals at issue. Based on your representations and our review, we agree the submitted information is confidential under section 595.001 of the Health and Safety Code. Accordingly, we conclude the department must withhold the submitted video recordings in their entireties under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 581949

Enc. Submitted documents

c: Requestor
(w/o enclosures)