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ATTORNEY GENERAL OF TEXAS

October 11, 2019

Mr. Brett Norbraten
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-28595

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# 790709 (ORR# 20190729-19233).

The Texas Health and Human Services Commission (the "department") received a request for information related to a mortality conference for a named individual at a specified facility and a roster of current employees at the facility. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 595.001 of the Health and Safety Code, which provides:

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

¹ We assume 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 those records contain substantially different types of information than that submitted to this office.

only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law.

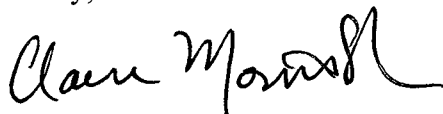
Health & Safety Code § 595.001. The department informs us the submitted information consists of records of the identity, diagnosis, evaluation, and treatment of a client of a state supported living center, which we understand is an intellectual disability program in the State of Texas. Subsection 595.003(a)(4) provides if the confidential records pertain to a deceased individual, the records may be disclosed in accordance with the prior written consent of: “(A) the executor or administrator of the deceased’s estate; or (B) if an executor or administrator has not been appointed, the deceased’s spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.” *Id.* § 595.003(a)(4). Section 595.004 provides for the release of confidential records to the person to whom the records pertain, or a parent of a minor or a guardian of the person. *See id.* § 595.004. Subsection 595.005(d) provides confidential records may be disclosed without the prior written consent required in subsection 595.003 if disclosure is authorized by a court order granted upon a showing of good cause. *See id.* § 595.005(d).

Because the individual at issue is deceased, the release provision of section 595.004 does not apply. Furthermore, the department states the requestor does not have a right of access to the requested records under any of the provisions of chapter 595 of the Health and Safety Code. Having considered the department’s representations and reviewed the submitted documents, we find the submitted information is confidential in its entirety under section 595.001 of the Health and Safety Code. Accordingly, the department must withhold the submitted information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)