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DEPARTMENT OF LAW
OFFICE OF THE
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BRUCE E. BABBITT
ATTORNEY GENERAL

February 14, 1978

The Honorable Burton S. Barr
House Majority Leader
Arizona House of Representatives
House Wing, Capitol Complex
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: 78-25 (R78-31)

Dear Mr. Barr:

This letter is in response to your request for our opinion whether the State Department of Economic Security ("DES") may release to you, upon your individual request, the names of the persons living at the three DES Bureau of Mental Retardation residential facilities as well as the names, and presumably the addresses, of their parents. You indicated in your letter that the list would enable you to contact the parents for the purpose of evaluating their attitudes toward the current DES residential service program. For the reason set forth hereafter, we think the release of that list would be improper.

DES has been directed by the Legislature to adopt rules to protect confidential information. A.R.S. §§ 41-1959.A¹

1. A.R.S. § 41-1959.A provides:

The department shall promulgate such rules and regulations required by federal law or regulation or that the department deems necessary to protect confidential information. No names or other information of any applicant, claimant, recipient or employer shall be made available for any political, commercial or other unofficial purpose.

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and 46-135.² While it is true that DES has not formally adopted a rule which generally protects the confidentiality of information relating to its mentally retarded residential clients,³ we have been informed that its long-standing administrative practice has been to maintain the confidentiality of the very information you seek, and that its clients and their parents are aware of and rely upon that practice. Given this reliance, we do not think it proper for DES now to act in a manner inconsistent with the practice merely because DES has not formally adopted it. To conclude otherwise would penalize the clients and their parents for the informality of DES.⁴

2. A.R.S. § 46-135 provides:

The state department shall establish such reasonable regulations as it deems necessary to protect confidential information. In no event shall the names of any recipient be made available for political or commercial purposes.

3. A.C.R.R. R6-6-101 through 107, which establish the confidentiality of client records, relate only to services to the developmentally disabled which are funded by federal grants under the Developmental Disabilities Services and Facilities Construction Act, 42 U.S.C. §§ 2670 et seq. We have been informed that no resident is receiving services which are so funded.

4. Because of our conclusion, it is not necessary for us to address what would otherwise be a serious concern for protecting the privacy of the DES clients and their parents. See generally, in this regard, Griswold v. State of Connecticut, 381 U.S. 479 (1965); Project, Government Information and the Rights of Citizens, 73 Mich.L.Rev. 971, 1231 (1975); Note, The Release of Private Information under Open Records Laws, 55 Tex.L.Rev. 911 (1977); and The President's Committee on Mental Retardation, The Mentally Retarded Citizen and the Law 242-3 (1976). Our conclusion also makes unnecessary an inquiry into whether the release would be contrary to any federal statute or regulation which may be applicable because of the federal funding that DES receives on behalf of some of its mentally retarded clients.

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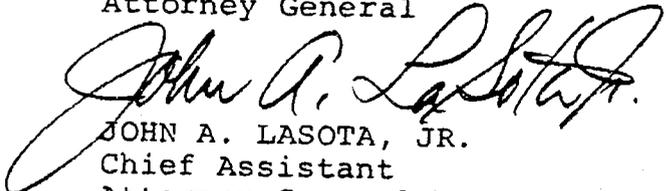
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It must be pointed out that you may well be able to accomplish your objective without violating the confidentiality practice. Nothing would prohibit DES, at your request, from contacting the clients and their parents on your behalf and advising them that you desire to obtain their views of DES' current residential services program. If they wish to communicate with you, DES⁵ could then provide them with your phone number and address.

If we can be of any further assistance to you in this regard, please let us know.

Sincerely yours,

BRUCE E. BABBITT
Attorney General



JOHN A. LASOTA, JR.
Chief Assistant
Attorney General

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5. Other appropriate alternatives also come to mind. DES could distribute a letter from you to the clients and their parents, and you could, in the letter, request them to contact you if they so desire. Or, DES could obtain proper consents from the clients and their parents for the release of their names and addresses to you, though this procedure probably is more cumbersome. Moreover, none of these alternatives raises the specter of an invasion of the privacy of any person. See fn. 4, supra.