



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1994

Ms. Kari A. Hernandez  
Assistant City Attorney  
Office of the City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR94-879

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23984.

The El Paso Police Department (the "department") received requests from a representative of the Texas Department of Protective and Regulatory Services ("TDPRS") for copies of two particular incident reports. The reports contain information about the suspects that is protected by the common-law right to privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). You assert that the department must withhold this information based on section 552.101 of the Government Code, which excepts from required public disclosure information which is considered confidential by law. Section 552.101 applies to information when its disclosure would result in a violation of the common-law right to privacy. *See id.*

Information that is excepted from public disclosure under the Open Records Act may be transferred between state agencies without destroying its confidential character, if the agency to which the information is transferred has the authority to obtain it. *See Open Records Decision Nos. 516 (1989) at 4-5; 490 (1988) at 2.* The suspects whose names appear on the requested records appear to be clients of the TDPRS.

Chapter 48 of the Texas Human Resources Code gives the Department of Human Services the authority to investigate the abuse, exploitation, or neglect of an elderly or disabled person and the authority to provide protective services under certain circumstances. However, recent legislation has transferred the responsibility for the provision of elderly protective services from the Department of Human Services to the TDPRS. Acts 1991, 72d Leg., 1st C.S., ch. 15. Section 1.06(c) of that legislation states that

On September 1, 1993, . . . the following functions, programs, and activities are transferred to the Department of Protective and Regulatory Services:

.....

(2) from the Texas Department of Human Services:

(A) the adult protective services program, including investigations and client services.

Moreover, V.T.C.S. article 4413(503), section 2 establishes the TDPRS as the state agency which now has primary responsibility for providing protective services.

Section 48.0385(a) of the Texas Human Resources Code provides as follows:

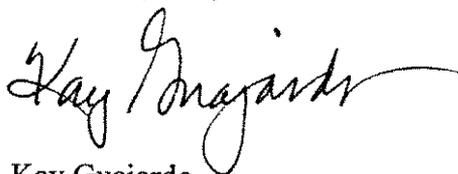
The Department [of Human Services] shall have access to any records or documents, including client-identifying information, necessary to the performance of duties required under this chapter. The duties include but are not limited to the investigation of abuse, exploitation, or neglect and the provisions of services to an elderly or disabled person. If the department or another state agency cannot obtain access to a record or document that is necessary to properly conduct an investigation under this chapter, the department or agency may petition the probate court or the statutory or constitutional county court having probate jurisdiction for access to the record or document.

We think that since the responsibility for the adult protective services program under chapter 48 was transferred to the TDPRS, the right to gain access to records which are necessary in carrying out that responsibility pursuant to section 48.0385(a) now belongs to the TDPRS. The TDPRS is, therefore, entitled to any records, including client-identifying information, that are necessary in performing its duty to provide protective services under chapter 48 of the Human Resources Code, including the investigation of abuse, exploitation, or neglect, and the provision of protective services to an elderly or disabled

person. Consequently, the requestor here, as a representative of the TDPRS may obtain the requested records pursuant to section 48.0385(a), in the course of providing services to a client, or in conducting an investigation of abuse, exploitation, or neglect.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 23984

Enclosures: Submitted documents

cc: Mr. Joe A. Torres  
Texas Department of Protective and Regulatory Services  
1401 Pendale  
El Paso, Texas 79936  
(w/o enclosures)