



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 10, 1997

Ms. Kate Herrington
Open Records Coordinator
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR97-0757

Dear Ms. Herrington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105205.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for "copies of statements of allegations made against [the requestor] on December 19, 1996." You claim that the requested documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with constitutional and common-law privacy and various statutes and regulations. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 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 48 of the Human Resources Code sets out guidelines for the investigation of abuse, exploitation, or neglect of an elderly or disabled person. Hum. Res. Code § 48.001. Section 48.101(a) provides that a report of abuse, neglect, or exploitation, the identity of the person making the report, and all files, reports, records, communications, and working papers used or developed in an investigation under chapter 48 are confidential.

The submitted documents appear to be "files, reports, records, communications, and working papers" used or developed in an investigation of alleged abuse. We note, however, that section 48.101(d) provides:

The department by rule shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise

confidential information relating to that report. The department shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

The requestor is the accused. You cite no department rule which "provide[s] for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation . . . of otherwise confidential information relating to that report." However, 25 Texas Administrative Code § 404.15(b)(3) provides that the accused shall be informed of the outcome of the investigation and that, if disciplinary action is taken, documentary evidence will be provided to the employee as outlined in 25 Texas Administrative Code § 404.10(4). Accordingly, the department must inform the requestor of the outcome of the investigation. The documents do not indicate whether disciplinary action was taken against the requestor; therefore, we are unable to determine whether the department must provide the requestor with the documentary evidence outlined in 25 Texas Administrative Code § 404.10(4). We conclude that section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code exempts from required public disclosure all requested documents that the department is not required to provide to the requestor in accordance with 25 Texas Administrative Code § 404.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 105205

Enclosures: Submitted documents

¹As we are able to resolve your request under section 48.101 of the Human Resources Code, we need not address your other arguments against disclosure.

cc: Mr. Kendrick Henderson
9001 S. Braeswood
Houston, Texas 77074
(w/o enclosures)

