



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1998

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

OR98-1312

Dear Ms. Herrington:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115208.

The Texas Department of Mental Health and Mental Retardation ("MHMR") received a request for records of an investigation into an allegation of neglect at Abilene State School. You explain that the investigation was conducted by the Department of Protective and Regulatory Services ("DPRS"). You assert that responsive records held by MHMR are protected from disclosure under section 48.101(a)(3) of the Human Resources Code. The records at issue were submitted to this office for review.

Chapter 48 of the Human Resources Code generally concerns the investigation of allegations of abuse or neglect of the elderly in certain facilities. Section 48.101(a)(3) provides that the following information is confidential:

- (a) a report of abuse, neglect, or exploitation made under this chapter;
- (b) the identity of the person making the report; and
- (c) except as provided by this section, all reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Section 48.101(a)(b) provides that confidential information “may be disclosed only for a purpose consistent with this chapter and as provided by the department or investigating state agency rule and applicable federal law.” You assert that the records at issue are subject to agency rules concerning confidentiality of reports of abuse, neglect, or exploitation of persons served by the department’s facilities.

You cite to title 25, section 404.15(a) of the Texas Administrative Code, which provides for the confidentiality of “reports, records, and working papers used or developed in the investigative process and the resulting final report regarding abuse, neglect, and exploitation.”¹ We note that section 404.15(b)(3) of title 25 states that “[t]he alleged perpetrator shall be informed of the outcome of the investigation” and that if disciplinary action is taken against the employee, “documentary evidence (including the investigation report) will be provided to the employee as outlined in § 404.10(4) of this title.”

We note that the requestor is the employee against whom allegations were made. Thus, we assume that the procedure in section 404.10 of title 25 of the Texas Administrative Code, concerning employee discipline actions, was followed if applicable. Section 404.10(4) provides, in part:

If the employee files a complaint in response to a written reprimand resulting from an investigation of abuse, neglect, or exploitation, or if the employee files a grievance in response to disciplinary action resulting from an investigation of abuse, neglect, or exploitation, the head of the facility will, upon written request, provide the employee with a copy of the investigative report. Before receiving the report, the employee will be required to complete a document acknowledging that the report’s content should be kept confidential. Additional documentary evidence, if any, may be accessed by the employee in accordance with procedures outlined in S3.116 of the Human Resources Operating Instruction (Employee Grievances)..

We agree that section 48.101(a)(3) of the Human Resources Code provides that the submitted records may not be disclosed in response to an open records request.² We also note that section 404.15(b)(3) of title 25 of the Texas Administrative Code governs the employee’s access to the investigative report.

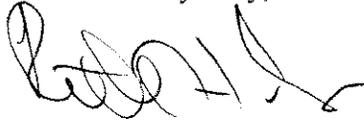
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

¹We note that you also cite to 40 T.A.C. § 710.12, which is another rule that provides for confidentiality of “reports, records, and working papers used by or developed in the investigative process and the resulting final report regarding abuse and neglect” in DPRS investigations of abuse, neglect, and exploitation of persons served by MHMR facilities.

²Because we agree that the records at issue are generally confidential, we need not address your other arguments against disclosure.

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 questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115208

Enclosures: Submitted documents

cc: Ms. Sara O'Shields