



March 29, 2000

Mr. George D. Cato
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-1213

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 132985 and 133320 by this office. We are combining these requests and issuing only one ruling, assigned ID# 132985.

The Texas Department of Health (the “department”) received two requests for information pertaining to an investigation of a report of abuse at The Methodist Hospital, a general hospital licensed by the department. The documents submitted to this office as responsive to these requests consist primarily of two reports. You inform us that the first report, titled “Abuse, Neglect, Exploitation Report of Contact” (“A/N/E report”), is a report generated pursuant to chapter 48 of the Human Resources Code “when a complaint of possible abuse or neglect of a disabled person is received by [the department].” You inform us that the second report, titled “Report of Contact,” contains some or all of the information found in the A/N/E report, and was “created for the purpose of documenting the state investigation performed by [the department] pursuant to state law.” The remaining responsive documents consist of a statement of deficiencies and plan of corrections, and a complaint tracking form.¹

You assert that portions of the responsive documents are made confidential by various statutes and the common law right to privacy under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by other statutes. We have considered your arguments and have reviewed the submitted information.

¹We note that the submitted statement of deficiencies and plan of corrections is a state form, not a HCFA Form 2567.

You argue that section 241.051 of the Health and Safety Code prohibits the release of all of the submitted documents in their entirety. Chapter 241 of the Health and Safety Code governs licensing of hospitals. Section 241.051 authorizes the department to make any inspection, survey, or investigation that it considers necessary. Section 241.051 provides in pertinent part:

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Section 552.001 et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

- (1) persons involved with the department in the enforcement action against the hospital;
- (2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;
- (3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

- (1) a notice of alleged violation against the hospital, which notice shall include the provisions of law which the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;
- (2) the pleadings in the administrative proceeding; and
- (3) a final decision or order by the department.

You inform our office that all of the submitted documents "are subject to the provisions outlined in [section] 241.051." You argue that because the submitted documents do not contain information which falls within the exceptions listed in section 241.051(e), they are

confidential pursuant to section 245.051. We agree that the statement of deficiencies and plan of correction, the complaint tracking form, and the report of contact are confidential pursuant to section 241.051 of the Health and Safety Code in conjunction with section 552.101 of the Government Code. Therefore, the department must not release these documents to the requestor.

However, as stated above, you inform our office that the A/N/E report is a report generated pursuant to chapter 48 of the Human Resources Code. Chapter 48 of the Human Resources Code governs investigations and protective services for elderly and disabled persons. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under ... chapter [48 of the Human Resources Code];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

Therefore, the A/N/E report must not be released to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

Section 48.101 authorizes the adoption of rules for the release of information otherwise made confidential by the statute. Subsection (d) provides that “the investigating state agency by rule *shall* provide for the release on request [of otherwise confidential information] to the person who is the subject of a report of abuse, neglect or exploitation or to that person’s legal representative[.]” Hum. Res. Code § 48.101(d) (emphasis added). You inform us that the rules authorized by section 48.101 appear at section 1.207 of title 25 of the Administrative Code, which relates to the confidentiality of information used or developed in the investigative process, including the resulting final report regarding abuse, neglect, or exploitation. You state that “section 1.207(h) . . . indicates the completed [A/N/E] report may be released to the authorized representative of the victim[.]” In pertinent part, section 1.207(h) reads:

The completed investigative report regarding abuse, neglect, or exploitation of an elderly or disabled person shall be released to the subject of a report of abuse, neglect, or exploitation or to that person's legal representative upon request. Any information relating to the reporter's identity or any other individual whose safety or welfare may be endangered by the disclosure shall be blacked out or deidentified.

25 T.A.C. § 1.207(h) (emphasis added). Here, the requestors are the alleged victim whose abuse, neglect, or exploitation was investigated by the department, and the alleged victim's legal representative. Moreover, the A/N/E report is the result of that investigation. Therefore, it appears that subsection 48.101(d) of the Human Resources Code, in conjunction with section 1.207(h) of title 25 of the Administrative Code, require the release of the A/N/E report to the requestors in this instance. However, because section 241.051 of the Health and Safety Code appears to prohibit the release of this information, you request our opinion as to which provision prevails with regard to the A/N/E report.

When reviewing conflicting statutes, the Code Construction Act, chapter 311 of the Government Code, provides that if a general provision conflicts with a special provision, the conflicting provisions must be construed, if possible, so that effect is given to both. Gov't Code § 311.026(a). In this instance, section 241.051 of the Health and Safety Code is the more general provision. Chapter 241 of the Health and Safety Code is popularly named "the Hospital Licensing Law," and the purpose of the chapter is to foster high standards of health care generally. *See* Health & Safety Code §§ 241.001, .002. Conversely, the more narrowly focused purpose of chapter 48 of the Human Resources Code is to authorize the investigation of abuse, neglect or exploitation of an elderly or disabled person and to provide protective services to that person. *See* Hum. Res. Code § 48.001.

Rule 1.207 of title 25 of the Administrative Code grants a limited right of access to information that section 48.101, which authorizes the promulgation of the rule, otherwise makes confidential. We do not believe that the specific purpose of section 1.207 is irreconcilable with the general purpose of section 241.051 of the Health and Safety Code.² Accordingly, we believe that in this instance, the requestors have a right of access to the A/N/E report pursuant to subsection 48.101(d) of the Human Resources Code in conjunction with section 1.207(h) of title 25 of the Administrative Code. However, we have marked identifying information in the A/N/E report that must be withheld pursuant to section 1.207(h). Therefore, except for the information we have redacted in accordance with section 1.207(h), we find that you must release the A/N/E report to the requestors. Because we find that section 48.101 of the Human Resources Code in conjunction with section 1.207 of title 25 of the Administrative Code govern access to the A/N/E report, we do not address your

²A valid administrative rule generally is construed in the same manner as a statute and has the force and effect of legislation. *See City of Lubbock v. Public Utility Comm'n*, 705 S.W.2d 329, 330-31 (Tex. App.—Austin 1986, writ ref'd n.r.e.); *see generally* 2 Tex. Jur. 3d Administrative Law §§ 41, 42 (1995).

arguments for its non-disclosure under Chapter 611 of the Health and Safety Code or under common law or constitutional privacy.

We also note that a social security number appears in the A/N/E report. A social security number may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* Moreover, we caution that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing the social security number we have marked in the A/N/E report, the department should ensure that the number was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, we conclude that except for the identifying information we have redacted in accordance with section 1.207(h) of title 25 of the Administrative Code and the social security number as noted above, you must release the A/N/E report to the requestors pursuant to section 1.207(h) in conjunction with subsection 48.101(d) of the Human Resources Code. We find that you must withhold the remaining information, consisting of the complaint tracking form, the statement of deficiencies and plan of correction, and the report of contact, as confidential pursuant to section 241.051 of the Health and Safety Code in conjunction with section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 132985

Encl. Submitted documents

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