



June 1, 2000

Mr. John McLane
Texas Department of Mental
Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2000-2137

Dear Mr. McLane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135989.

The Texas Department of Mental Health and Mental Retardation (the "department") received a written request from an employee of the Austin State School for records pertaining to the department's investigation of an allegation against the requestor of client neglect. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with, *inter alia*, section 48.101 of the Human Resources Code.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 48.101 of the Human Resource Code provides in pertinent part:

(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 this chapter;

¹Because we resolve your request under section 48.101 of the Human Resources Code, we do not address the applicability of the other statutory confidentiality provisions you raise.

- (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.

The submitted documents constitute the “files, reports, records, communications, and working papers” used or developed in the department’s investigation of alleged neglect. We therefore conclude that the confidentiality provisions of section 48.101 apply to the records at issue.

As noted above, however, the requestor of the information is the state school employee accused of the neglect. Section 48.101(d) provides:

The department or investigating state agency *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 or investigating state agency 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. [Emphasis added.]

Pursuant to section 48.101(d), the department promulgated administrative rules regarding an employee’s right of access to investigatory materials. Section 417.512(d) of title 25 of the Texas Administrative Code provides in pertinent part:

(d) When disciplinary action is taken against an employee based on confirmed abuse or neglect, the head of a facility notifies the employee in writing of the disciplinary action taken and any right to a grievance hearing the employee may have under the department’s internal policies and procedures relating to employee grievances. If the employee files a complaint in response to a written reprimand resulting from confirmed abuse or neglect, or if the employee files a grievance in response to disciplinary action resulting from confirmed abuse or neglect, the head of the facility, upon the employee’s written request, provides the employee with a copy of or access to the investigative report.

In this instance, you inform us that although the requestor received a written reprimand as a result of a finding that he neglected one of the department’s clients, the requestor “has not

filed a complaint in response to” the disciplinary action.² Consequently, the requestor does not have a right of access to the records at issue pursuant to section 417.512. Additionally, after having reviewed the other access provisions found in chapter 417 of title 25, we find no other provision that would grant the requestor a right of access to these materials. Accordingly, we conclude that the department may not release the information at issue to the requestor; these materials must be withheld in their entirety pursuant to section 48.101 of the Human Resources 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).

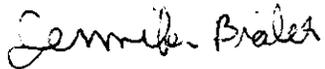
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²You further inform us that “the ten-day deadlines for filing such a complaint has passed.” We assume that the ten-day deadline for filing such a complaint is established under the department’s “internal policies and procedures” referenced in section 417.512(d).

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/ljp

Ref: ID# 135989

Encl.: Submitted documents

cc: Mr. James Meschwitz