



April 30, 2001

Ms. Tina Plummer  
Open Records Coordinator  
Texas Department of Mental Health Mental Retardation  
P.O. Box 12668  
Austin, Texas 78711-3761

OR2001-1751

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146612.

The Texas Department of Mental Health Mental Retardation (the "department") received a request for information pertaining to two confirmed cases of abuse /neglect which occurred in the Denton State School. You claim that the requested information is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with chapter 48 of the Human Resources Code, and that, alternatively, portions of the requested information are excepted under section 552.101 in conjunction with various statutes and regulations, as well as under section 552.117 of the Government Code. We have considered the exceptions you raise and reviewed the submitted information.

Initially, we note that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 now states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108 . . . ." Gov't Code § 552.022(a)(1). We conclude that the submitted information consisting of two Texas Department of Protective and Regulatory Services APS Abuse and Neglect Investigative

Reports falls within the ambit of section 552.022(a)(1). Therefore, as prescribed by section 552.022, the submitted reports must be released to the requestor unless they are confidential under other law.

The department claims that the submitted information is confidential under section 48.101 of the Human Resources Code, which is "other law" for purposes of section 552.022. Section 48.101 provides in relevant 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;
- (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.

Hum. Res. Code § 48.101(a). The submitted documents constitute "files, reports, records, communications, and working papers" used or developed in an investigation of alleged neglect. We therefore conclude that the confidentiality provisions of section 48.101 apply to the records at issue.

You inform us, however, that the requestor of the information is the former 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 the employee was terminated during her probationary period, and that employees terminated during this period are not entitled to file a grievance, and therefore are not entitled to the investigatory report. Furthermore, we assume that having been terminated, the former employee was not reprimanded, and therefore has filed no complaint in response to such a reprimand. Consequently, as the requestor is not an employee who filed a complaint or grievance in regard to this matter, she 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. As we resolve your request under section 552.101, we need not address your argument under section 552.117.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 146612

Encl. Submitted documents

cc: Ms. Lina Dunlap  
10075 Royal Lane #2083  
Dallas, Texas 75238  
(w/o enclosures)