



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2006

Mr. John T. Patterson  
Assistant City Attorney  
Legal Services  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2006-01850

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 242954.

The Waco Police Department (the "department") received a request for information pertaining to two specified offenses. You inform us that the department is providing some of the requested information to the requestor but claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information that other statutes make confidential. *See* Gov't Code § 552.101. You contend that portions of the submitted information are excepted under section 552.101 in conjunction with section 48.101 of the Human Resources Code. Section 48.101 pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities and provides in relevant 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 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.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101. The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Family and Protective Services and certain other state agencies, depending on the circumstances surrounding the incident.<sup>1</sup> *See* Hum. Res. Code §§ 48.151, 48.152, 48.252, 48.301. Thus, records of a police department investigation generally are not subject to section 48.101.

A portion of the information at issue consists of a report created by the Department of Family and Protective Services that was used or developed in an investigation of the alleged abuse of an eighty-one-year old woman. Thus, we agree that this report is confidential under section 48.101 and must be withheld under section 552.101 on that basis.<sup>2</sup> The remainder of the information you seek to withhold on this basis is contained in the offense report that was used or developed by the department in the course of its own criminal investigation of the alleged abuse. You indicate that one of the names you have highlighted in the offense report is that of the person who made the report of alleged abuse to the Department of Family and Protective Services. We agree that the department must withhold this information in the offense report, which we have marked, under section 552.101 in conjunction with section 48.101. You also argue that some of the highlighted information in the offense report is cited from the Department of Family and Protective Services' report and thus is subject to section 48.101. However, upon review, we find that this information, as well as the remaining information that you have highlighted in the narrative of the offense report, is not a report,

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<sup>1</sup>In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

<sup>2</sup>We note that section 48.101 of the Human Resources Code authorizes the Department of Family and Protective Services or other investigating state agency to provide by rule for the release of otherwise confidential information that relates to a report of abuse, neglect, or exploitation. *See* Hum. Res. Code § 48.101(d).

record, communication, or working paper used or developed in a chapter 48 investigation, and therefore, is not confidential under section 48.101. Thus, this highlighted information may not be withheld under section 552.101.

To conclude, the submitted report created by the Department of Family and Protective Services, as well as the name we have marked in the submitted offense report, are confidential under section 48.101 and must be withheld under section 552.101. The remaining submitted information must be released.

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Pub. 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 Office of the Attorney General 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 ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ramsey Abarca". The signature is written in a cursive, flowing style.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/sdk

Ref: ID# 242954

Enc. Submitted documents