



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2007

Ms. Patricia Fernandez
Open Government Attorney
Texas Department of Families and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2007-05531

Dear Ms. Hernandez:

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# 279936.

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a named individual and a specified case for a specified period of time. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

The department acknowledges, and we agree, that it failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

demonstrating that the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will address your arguments under this exception.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Chapter 48 of the Human Resources Code regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. Section 48.101 makes the following information confidential:

- (1) a report of abuse, neglect, or exploitation made under [chapter 48];
- (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.

Human Res. Code § 48.101(a). You state that the submitted documents are “working papers and records of further communication development during an investigation into abuse, neglect or exploitation,” which you indicate was conducted pursuant to chapter 48 of the Human Resources Code. We note that such information must not be released to the public, *except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. See id. § 48.101(b). But see id. § 48.101(c)* (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. Based on your representations and our review of the submitted information, we agree that the submitted information is confidential under section 48.101. *See Human Res. Code § 48.101(b); Attorney General Opinion JM-851 (1988)* (confidentiality of adult protective services records continues after client’s death). You state the requestor does not have a right of access to this information. *See Human Res. Code § 48.101(c); 25 T.A.C. § 1.207*. Accordingly, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources 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, 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 10 calendar days of the date of this ruling.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jb

Ref: ID# 279936

Enc. Submitted documents

c: Ms. Kristen Holland Shear
Dallas Morning News
c/o Patricia Fernandez
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