



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2008

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2008-00923

Dear Mr. Norbraten:

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# 300217.

The Texas Department of Aging and Disability Services (the "department") received a request for five categories of information including documentation regarding a specified incident, an internal investigation, and the requestor's personnel and departmental files. You state that some responsive information has been released to the requestor. You claim that some of the submitted 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

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutory confidentiality provisions. You contend that some of the submitted information is confidential under section 48.101 of the Human Resources Code, which pertains to the

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.

disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides in pertinent 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 department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). You state that the documents in Exhibit A relate to a report and investigation made under chapter 48 of the Human Resources Code. Based upon your representations and our review, we find that the documents in Exhibit A consist of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48. 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), (d), (e), (f) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude that the department must withhold Exhibit A in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.²

You state that some of the information in Exhibit B is excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code, which provides that “[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.” Health & Safety Code § 595.001. You state that the information at issue consists of records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in

²Because we are able to make a determination under section 48.101, we need not address your additional arguments against the disclosure of these records.

connection with the Texas state schools' provision of mental retardation services. You further state that the requestor has not demonstrated that she has a right of access to the submitted records under section 595.003 or section 595.004 of the Health and Safety Code.

We have reviewed the information that you have marked in Exhibit B, and agree that some of it is confidential under section 595.001 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. However, we find that the remainder of this information, which we have marked for release, is not the type of information that is confidential under section 595.001 of the Health and Safety Code and the department may not withhold it under section 552.101 on that ground. We have marked some additional information in Exhibit B that is confidential under section 595.001 and must be withheld under section 552.101.

In summary, the department must withhold Exhibit A in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. Except for the information that we have marked for release, the department must withhold the information you have marked, as well as the additional information that we have marked, in Exhibit B under 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code. The remaining submitted information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 300217

Enc. Submitted documents

c: Ms. Leah McGovern
2508 Avenue N
Austin, Texas 78727
(w/o enclosures)