



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2009-03801

Dear Mr. Smith:

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# 337825.

The Texas Health and Human Services Commission (the "commission") received two requests from different requestors for all documents and information pertaining to two specified discrimination charges. You state that you have released most of the requested information to the requestors. You 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 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 a portion of the submitted information consists of Adult Protective Service records of an investigation of alleged abuse of a client of the San Antonio State Hospital, which we understand was conducted pursuant to chapter 48 of the Human Resources Code. You further state that a portion of the submitted information contains quoted excerpts from that report within documents and witness statements maintained by the commission's Civil Rights Office in connection with their investigations. 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). Based on your representations, we agree that the Adult Protective Service records and quoted excerpts you have marked, as well as the information we have marked in the documents submitted to our office on January 20, 2009, are confidential under section 48.101. Accordingly, we conclude that the commission must withhold this information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We find that the identities of the commission's living clients are intimate and embarrassing information of no legitimate public interest. Thus, you must withhold the identifying information that we have marked under section 552.101 in conjunction with common-law privacy.

In summary, the commission must withhold the Adult Protective Service records and quoted excerpts you have marked, as well as the information we have marked in the second set of documents provided to this office, under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The commission must also withhold the identifying information that we have marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 337825

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)