



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 4, 2010

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

OR2010-00041

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# 366108 (DADS number 2009SOLEG205).

The Texas Department of Aging and Disability Services (the "department") received a request for fourteen categories of information including licensure and complaint enforcement, policies and procedures, and guardianship records. You state you will release some information to the requestor. You claim that 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 information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 161.111(a) of the Human Resources Code, which provides as follows:

(a) All files, reports, records, communications, or working papers used or developed by the department in the performance of duties relating to the assessment for or the provision of guardianship services to an individual referred for guardianship services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code.

Hum. Res. Code § 161.111(a). You state that the information in Exhibit A consists of e-mailed communications and working papers developed specifically for the department's particular clients' guardianship needs. You do not indicate that any of the release provisions of section 161.111(b)-(d) of the Human Resources Code or section 10.401 of title 40 of the Texas Administrative Code apply to the submitted information. See Hum. Res. Code §§ 161.111(a)-(d); 40 T.A.C. § 10.401. Based on your representations and our review of the information at issue, we conclude that the information in Exhibit A is confidential pursuant to section 161.111(a) of the Human Resources Code, and the department must withhold it under section 552.101 of the Government Code.

You argue that portions of the information in Exhibit B is excepted from disclosure under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the [department's] assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the [department] in the performance of their official duties.

Hum. Res. Code § 12.003(a); see also *id.* § 21.012 (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs). The term "assistance" in sections 12.003 and 21.012 includes "all forms of assistance and services for needy persons authorized by Subtitle C" of title 2 of the Human Resources Code. *Id.* § 11.001(4); see also *id.* § 31.001 *et seq.* (Hum. Res. Code tit. 2, subtit. C, Assistance Programs). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the [department's] clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Open Records Decision No. 584 at 3 (1991). Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. See also 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. §§ 431.300 *et seq.*; Hum. Res. Code § 21.012(a); Open Records Decision No. 166 (1977).

Upon review, we agree that the information you have marked in Exhibit B consists of information concerning individuals receiving department assistance. We find that the release

of this information in this instance would not be for purposes directly connected with the administration of these programs. Accordingly, we conclude that the department must withhold the information you have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.

In summary, the department must withhold the information in Exhibit A under section 552.101 in conjunction with section 161.111(a) of the Human Resources Code. The department must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 366108

Enc. Submitted documents

cc: Requestor
(w/o enclosures)