



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2010-01121

Dear Ms. Sandoval-Walker:

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# 369027.

The El Paso Police Department (the "department") received a request for information pertaining to a specified investigation. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. You contend the submitted report is confidential under section 48.101 of the Human Resources Code, which pertains to the 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 [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Family and Protective Services (“DFPS”) and certain other state agencies, depending on the circumstances surrounding the incident.¹ 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. The submitted report reflects that it was created by the department pursuant to its own investigation into alleged abuse. Thus, we conclude that the submitted report was not used or developed in an investigation made under chapter 48 of the Human Resources Code. Therefore, it may not be withheld under section 552.101 of the Government Code on this basis. As you raise no further arguments against disclosure of the submitted report, it 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

¹In 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.

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,

A handwritten signature in cursive script that reads "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 369027

Enc. Submitted documents

cc: Requestor
(w/o enclosures)