



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2010

Ms. Dawn Burton  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2010-01405

Dear Ms. Burton:

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# 369338.

The Texas Department of State Health Services (the "department") received a request for information relating to a specified investigation. You state some of the requested information will be released. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge the department 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by 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). Because sections 552.101 and 552.137 can provide compelling

reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. 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 states in relevant part:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(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.

(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<sup>1</sup>] or investigating state agency rule and applicable federal law.

...

(d) The executive commissioner shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person’s legal representative of otherwise confidential information relating to that report. [The Texas Department of Family and Protective Services] or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter’s identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

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<sup>1</sup>In 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.

Hum. Res. Code § 48.101(a), (b), (d). You assert the information you have marked consists of portions of Adult Protective Service records regarding an investigation into the alleged abuse of disabled persons to which the requestor does not have a right of access. *See id.* You state this investigation was conducted pursuant to chapter 48 of the Human Resources Code. We note such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by the Texas Department of Family and Protective Services or investigating state agency rule or federal law. *See id.* § 48.101(b). Based on your representations, we agree the information at issue is confidential under section 48.101. *See id.* § 48.101(a). You further state the requestor does not have a right of access to this information. Accordingly, we conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.<sup>2</sup>

Section 552.101 also encompasses section 611.002(a) of the Health and Safety Code, which provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we find a portion of the remaining information, which you have marked, is generally confidential under section 611.002 of the Health and Safety Code. However, as an attorney for the person whose mental health record is at issue, the requestor may have a right of access to this information. *See id.* Thus, the department may only release the marked mental health record in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address you have marked does not appear to be of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the department must withhold

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure as they pertain to this information.

the marked e-mail address under section 552.137 of the Government Code, unless the department has received consent for its release.<sup>3</sup>

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The department may only release the marked mental health record in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The department must withhold the marked e-mail address under section 552.137 of the Government Code, unless the department has received consent for its release. The remaining information must be released to this 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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/rl

Ref: ID# 369338

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.