



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 5, 2010

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

OR2010-03232

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# 370517 (DADS number 2009SOLEG0227).

The Texas Department of Aging and Disability Services ("DADS") received a request for specified documents related to allegations against the requestor's client. You state you have released some information to the requestor: 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 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 sections 242.126 and 242.127 of the Health and Safety Code. Subchapter E of chapter 242 of the Health and Safety Code concerns reports of abuse and neglect at convalescent and nursing homes and related institutions. See Health & Safety Code §§ 242.121 *et seq.* Section 242.126(g) provides, in relevant part:

(g) The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public:

(1) the name of:

(A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;

(B) the person making the report of abuse or neglect or other complaint; and;

(C) an individual interviewed in the investigation.

*Id.* § 242.126(g)(1). Section 242.127 provides as follows: "A report, record, or working paper used or developed in an investigation made under [subchapter E, chapter 242] and the name, address, and phone number of any person making a report under [subchapter E, chapter 242] are confidential and may be disclosed only for purposes consistent with rules adopted by the [department] or the designated agency." *Id.* § 242.127. In addition, the department adopted section 19.2010 of title 40 of the Texas Administrative Code, which applies to investigations of complaints of abuse, neglect, and exploitation at nursing facilities and related institutions.<sup>1</sup> Section 19.2010 provides in part as follows:

(a) Confidentiality. All reports, records, and working papers used or developed by [the department] in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to [the department] as part of the investigation.

40 T.A.C. § 19.2010(a)(1). The submitted information pertains to an investigation conducted under the authority of chapter 242 of the Health and Safety Code into complaints of abuse or neglect of a nursing facility resident. You state the submitted investigation report was created pursuant to section 242.126.<sup>2</sup> Therefore, we conclude that the personally identifiable

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<sup>1</sup>We note the Texas Department of Human Services was abolished in 2003 and the powers, duties, functions, programs, and activities related to providing long-term care services of the Department of Human Services were transferred to DADS. See Act of Sept. 1, 2003, 78th Leg., R.S. ch. 198, § 1.20(a)(2), (d), 2003 Tex. Gen. Laws 611, 637-38, 641.

<sup>2</sup>Pursuant to section 552.303 of the Government Code, this office notified DADS by letter dated February 18, 2010, that we needed additional information explaining whether the investigation at issue was conducted under the authority of chapter 242 of the Health and Safety Code. See *id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). You informed us in a telephone conversation that the investigation at issue was an investigation of elderly abuse conducted under the authority of chapter 242 and that the submitted report was created pursuant to section 242.126.

information we have marked in the submitted investigation report must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 242.126 of the Health and Safety Code and section 19.2010 of title 40 of the Texas Administrative Code.

We further conclude that a portion of the remaining information was used or developed during the course of the underlying investigation and is confidential under section 242.127 of the Health and Safety Code. Therefore, DADS must withhold the remaining information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 242.127 of the Health and Safety Code.

In summary, DADS must withhold the information we have marked in the submitted investigation report under section 552.101 of the Government Code in conjunction with section 242.126 of the Health and Safety Code and section 19.2010 of title 40 of the Texas Administrative Code. DADS must also withhold also the information we have marked under section 552.101 in conjunction with section 242.127 of the Health and Safety Code. The remaining information must be released.<sup>3</sup>

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 370517

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)