



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 30, 2010

Mr. Thomas D. McClure  
Texas Department of State Health Services  
Assistant General Counsel  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2010-06242

Dear Mr. McClure:

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# 377638.

The Department of State Health Services (the "department") received a request for a specified investigative report.<sup>1</sup> You claim 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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 48.101 of the Human Resources Code, which provides in part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

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<sup>1</sup>You inform us the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

- (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.

Hum. Res. Code § 48.101(a). You state that the submitted report was created by the Department of Family and Protective Services (the "DFPS") during an investigation conducted pursuant to chapter 48 of the Human Resources Code. Based on your representations and our review, we find that the submitted information was used or developed in an investigation of alleged abuse, neglect, or exploitation under chapter 48. Thus, the submitted information falls within the scope of section 48.101(a).

In this instance, however, the perpetrator of the alleged abuse, neglect, or exploitation is the requestor, who is a former employee of the department. Section 48.101(d) provides:

- (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 department 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.

*Id.* § 48.101(d). Pursuant to section 48.101(d), the department has adopted administrative rules regarding an employee's right of access to investigatory materials. Section 417.512(d) of title 25 of the Texas Administrative Code provides in part:

- (d) When disciplinary action is taken against an employee based on confirmed abuse or neglect, the head of a facility notifies the employee in writing of the disciplinary action taken and any right to a grievance hearing the employee may have under [the department's] internal policies and procedures relating to employee grievances. If the employee files a grievance in response to disciplinary action resulting from confirmed abuse or neglect, the head of the facility, upon the employee's written request, provides the employee with a copy of or access to the investigative report.

25 T.A.C. § 417.512(d). You do not inform us either that disciplinary action has been taken against the requestor, based on confirmed abuse or neglect, or that the requestor has filed a grievance. The submitted request for information states that the request was made for the

purpose of researching why the requestor was not rehired. Thus, because there is no indication that the requestor has filed a grievance with respect to the matter to which the submitted information pertains, we find that the requestor does not have a right of access under section 417.512(d) to the information at issue. We are not aware of any other provision of the department's rules that would grant the requestor a right of access to the information at issue. We therefore conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. As our ruling is dispositive we need not address your remaining argument against disclosure.

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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 377638

Enc. Submitted documents

c: Requestor  
(w/o enclosures)