



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2010

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

OR2010-07013

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# 379541 (DSHS OR File # O16989-2010).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified investigation involving the Methodist Mansfield Medical Center (the "center"). You state you have made or will make some of the requested information available to the requestor. You claim that the submitted report is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.302. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.*; *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). A compelling reason exists when third-party interests are at stake or when

information is confidential by law. Open Records Decision No. 150 (1977). Because your claim under section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the submitted report.

You state a complaint was filed concerning the center. You inform us the requested information relates to an investigation of a hospital performed pursuant to section 241.051 of the Health and Safety Code as well as an investigation of abuse, neglect, or exploitation of an elderly person conducted under section 48.101 of the Human Resources Code. Thus, we understand the requested information pertains to two separate investigations of the center. You state the department was issued a previous determination in Open Records Letter No. 2005-04917 (2005) and, therefore, does not seek a ruling of investigative documents under section 241.051. Accordingly, we only address your argument under section 48.101 of the Human Resources Code for the submitted report.

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 section encompasses information that is made confidential by statute. You claim the submitted report is confidential under section 48.101 of the Human Resources Code, which pertains to the confidentiality of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in relevant 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 [Texas Department of Family and Protective Services ("DFPS")] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). You assert the submitted report was used or developed in an investigation made under chapter 48 or in providing services as a result of an investigation. Thus, this information must not be released to the public, except for a purpose

consistent with chapter 48 and as provided by DFPS or investigating state agency rule or federal law. *See id.* § 48.101(b); *see also id.* § 48.101(c), (d), (d-1), (e), (e-1), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. Section 48.101(d) of the Human Resources Code provides that “[t]he executive commissioner shall adopt rules providing for the release . . . 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[.]” Hum. Res. Code § 48.101(d). Section 48.101(e) states “[t]he executive commissioner may adopt rules relating to the release of information . . . that is contained in the record of a deceased individual who was the subject of an investigation conducted by [DFPS] or investigating state agency[.]” *Id.* § 48.101(e).

We understand the department has adopted section 1.207 of title 25 of the Texas Administrative Code to govern the release of information pertaining to the abuse, neglect, or exploitation of an elderly or disabled person. Section 1.207 provides:

(h) The completed investigative report regarding abuse, neglect, or exploitation of an elderly or disabled person shall be released to the subject of a report of abuse, neglect, or exploitation or to that person’s legal representative upon request. Any information relating to the reporter’s identity or any other individual whose safety or welfare may be endangered by the disclosure shall be blacked out or deidentified.

25 T.A.C. § 1.207(h). In this instance, you acknowledge the requestor is the daughter of the deceased individual who is the subject of the alleged abuse, neglect, or exploitation. As such, the requestor may be the legal representative of this individual and thus, she may have a right of access to the submitted report. *See id.* You state the requestor did not provide documentation indicating she is the legal representative of the individual at issue. However, we find if the requestor provides evidence demonstrating she is the legal representative of the individual at issue, then the department must release the submitted report to her as provided in section 1.207. If the requestor does not provide such evidence, the department must withhold the submitted report in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

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,

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

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 379541

Enc. Submitted documents

cc: Requestor
(w/o enclosures)