



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2010

Ms. Mary Salluce
Open Government Attorney
Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714

OR2010-10533

Dear Ms. Salluce:

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# 386717.

The Department of Family and Protective Services (the "department") received a request for records pertaining to the department's investigation of the requestor and the requestor's husband. You state the department has released a portion of the responsive information. You claim the remaining 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.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). In this instance, the requestor has provided documentation reflecting she has requested the information at issue four times since June of 2009. However, the department first sought a ruling on the requested information in a letter faxed to this office on May 12, 2010. Consequently, we

conclude the department failed to comply with the requirements mandated by the Act with respect to the requested information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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 id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can 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). You raise section 552.101 of the Government Code, which can provide a compelling reason to withhold information. Thus, we consider whether section 552.101 authorizes the withholding of any of the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses statutory confidentiality provisions. You contend the reporting party's identity must be withheld from the submitted records pursuant to 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 department or investigating state agency rule and applicable federal law.

(d) The executive commissioner [of the Texas Health and Human Services Commission (the "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.

Hum. Res. Code § 48.101(a), (b), (d). Upon review, the submitted department investigative reports were used or developed in investigations conducted under chapter 48 of the Human Resources Code. *See id.* § 48.252(a)(1), 40 T.A.C. § 711.1. Such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See* Hum. Res. Code § 48.101 (b-g) (permitting release of confidential information only in certain circumstances). Subchapter M of chapter 705 of title 40 of the Texas Administrative Code was adopted by the commissioner to explain to whom and under what circumstances case records made confidential under section 48.101 may be released. 40 T.A.C. § 705.7101. Section 705.7107 of that subchapter provides in relevant part:

Upon request and to the extent required by state or federal law, [the department] must make case records or portions of case records available after appropriate redactions to the following persons:

(1) For living [Adult Protective Services ("APS")] clients:

(A) An adult APS client;

...

(3) An alleged or designated perpetrator of abuse, neglect, or exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator[.]

Id. § 705.7107. In this instance, the requestor is the subject of both reports: in one report she is an alleged perpetrator, and in the other report she is involved as an APS client and alleged victim. Thus, pursuant to section 48.101(d), these reports are subject to release to this requestor pursuant to rules adopted by the commissioner, provided the reporter's identity is redacted. Consequently, section 705.7107(1)(A) provides this requestor a right of access, subject to appropriate redactions, to the department report in which she is involved as an APS client. *See id.* § 705.7107(1)(A). Additionally, section 705.7107(3) provides this requestor a right of access, subject to appropriate redactions, to any information that relates to her in the report that lists her as an alleged perpetrator. *See id.* § 705.7107(3). In either

case, section 705.7117 provides that the department “must redact case records to remove the name, address, and any other information in the record which reveals the identity of any person as a ‘reporter.’” *Id.* § 705.7117(b).

In summary, with respect to the report that lists the requestor as an alleged victim, the department must redact the reporting party’s identity under section 552.101 of the Government Code in conjunction with sections 48.101(d) of the Human Resources Code and 705.7117(b) of title 40 of the Texas Administrative Code, and must release all the remaining information to the requestor pursuant to section 48.101(d) of the Human Resources Code in conjunction with section 705.7107(1)(A) of title 40 of the Texas Administrative Code. With respect to the report that lists the requestor as an alleged perpetrator, the department must redact the reporting party’s identity under section 552.101 of the Government Code in conjunction with sections 48.101(d) of the Human Resources Code and 705.7117(b) of title 40 of the Texas Administrative Code, and must release to the requestor the remaining portions of this report that pertain to her, pursuant to section 48.101(d) of the Human Resources Code in conjunction with section 705.7107(3) of title 40 of the Texas Administrative Code.

You also ask this office to issue a previous determination permitting the department to withhold or release abuse and neglect investigation records concerning APS pursuant to chapters 40 and 48 of the Human Resources Code without requesting a ruling from this office. We decline to issue such a previous determination at this time.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 386717

Enc. Submitted documents

cc: Requestor
(w/o enclosures)