



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2011

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

OR2011-15959

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# 434664 (DADS #2011SOLEG0176).

The Texas Department of Aging and Disability Services (the "department") received two requests from the same requestor for written statements and log book information pertaining to a specified case. You claim some of 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 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 information other statutes make confidential. You contend Exhibit A is confidential under 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:

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

(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.

Hum. Res. Code § 48.101(a), (b). You indicate Exhibit A, which consists of written statements gathered by the Adult Protective Services division of the Texas Department of Family and Protective Services, relates to an investigation made under chapter 48 of the Human Resources Code. *See id.* § 48.252(a)(1), 40 T.A.C. § 711.1. Based upon your representations and our review, we find Exhibit A consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48. 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). *But see id.* § 48.101(c)-(g) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude the department must withhold Exhibit A in its entirety under section 552.101 in conjunction with section 48.101.

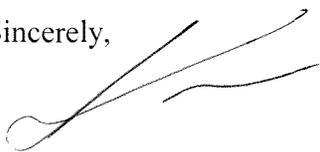
Section 552.101 of the Government Code also encompasses section 595.001 of the Health and Safety Code, which provides “[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.” Health & Safety Code § 595.001. You state the information you have marked in Exhibit B pertains to the identity, diagnosis, evaluation, or treatment of a mental retardation program client. You also assert the release provisions set forth in sections 595.003 and 595.004 are inapplicable here. Having considered your representations and reviewed the submitted records, we find the information you have marked, and the information we have marked, in Exhibit B is confidential under section 595.001. Therefore, the department must withhold this information under section 552.101 in conjunction with section 595.001.

In summary, the department must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The department must also withhold the marked information in Exhibit B under section 552.101 in conjunction with section 595.001 of the Health and Safety Code. The remaining information must be released.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 434664

Enc. Submitted documents

c: Requestor  
(w/o enclosures)