



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2012

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

OR2011-18979A

Dear Mr. McClure:

This office issued Open Records Letter No. 2011-18979 (2011) on December 27, 2011. In that ruling, we determined the Texas Department of State Health Services (the “department”) must release all information from the submitted Texas Department of Family and Protective Services (“DFPS”) report that pertained to the requestor 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. In subsequent communication with our office, you inform us that section 705.7107 authorizes DFPS, not the department, to release this type of information, and the requestor sent her request to the department, not DFPS. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov’t Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on December 27, 2011. *See generally id.* § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act).

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# 440494 (DSHS # 19429/2012).

The department received a request for information pertaining to a specified investigation file.<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 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 the submitted information 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 as follows:

(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.

...

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

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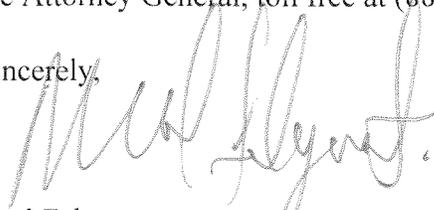
<sup>1</sup>We note the department received clarification of the request. See Gov’t Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

Hum. Res. Code § 48.101(a), (b), (d). You state the submitted information was developed as part of an investigation by DFPS 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). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude 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.

You ask this office to grant the Texas Department of State Health Services a previous determination permitting it to withhold this type of information under section 48.101 of the Human Resources Code without the necessity of seeking a decision from this office. We decline to issue such a previous determination at this time.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 440494

Enc. Submitted documents

c: Requestor  
(w/o enclosures)