



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-19520

Dear Mr. Brown:

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# 473051.

The El Paso Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses information protected by 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 [the Texas Department of Family and Protective Services (the "DFPS")] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). Section 48.051 of the Human Resources Code provides "a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation" shall report certain prescribed information to the DFPS or another appropriate state agency.¹ *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports made by a police department generally are not subject to section 48.101. The submitted report was created by the department in connection with a criminal investigation conducted by the department. However, you inform us the submitted information was used or developed in an investigation, or in providing services as a result of an investigation, conducted under chapter 48 of the Human Resources Code. You state the investigation at issue was conducted jointly by the department and the Adult Protective Services ("APS") division of the DFPS. Thus, because the legislature expressly made all information used by the APS in its investigations under chapter 48 of the Human Resources Code confidential, the submitted report is confidential under section 48.101. *See id.* § 48.101(a)(3). Such information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by DFPS or an investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c)-(f) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it otherwise appear, any exception to confidentiality is applicable 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.²

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 ("A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.").

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 473051

Enc. Submitted documents

c: Requestor
(w/o enclosures)