



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 18, 2013

Mr. Jonathan Miles  
DFPS Open Government Attorney  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2013-12380

Dear Mr. Miles:

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# 493540 (DFPS ORR Request No. 05082013COE).

The Texas Department of Family and Protective Services (the "department") received a request for five categories of information pertaining to a specified Adult Protective Services case. You state the department has released some information to the requestor. You claim 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, you state you have redacted social security numbers under section 552.147 of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code § 552.147(b)*. In this instance, you have redacted the requestor's social security number. We note section 552.147 is based on privacy principles. Thus, the requestor has a right of access to his own social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates solely on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning themselves). Thus, the

requestor's own social security number may not be withheld from him under section 552.147 of the Government Code.

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 protected by other statutes. Section 48.101 of the Human Resources Code 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.

Hum. Res. Code § 48.101(a), (b), (d). You state the submitted information was developed as part of an investigation of elder neglect made 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). In this

instance, the requestor is the alleged perpetrator. Thus, pursuant to section 48.101(d), the submitted information is subject to release pursuant to rules adopted by the executive commissioner of the Texas Health and Human Services Commission (the "commissioner"). 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:

...

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

*Id.* § 705.7107(3). Consequently, 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, the department must release all information in the submitted documents that pertains to the requestor. We note you have marked for redaction a social security number under section 552.147(b). *See* Gov't Code § 552.147(b). However, section 552.147 is a general exception to disclosure under the Act. A specific statutory right of access to information prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Thus, to the extent the requestor has a right of access under section 48.101(d) in conjunction with section 705.7107(3) to the redacted information, it may not be withheld under section 552.147. However, the information that does not relate to the requestor must be withheld under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code.

You also ask this office to issue a previous determination that would permit the department to withhold information subject to section 48.101 of the Human Resources Code. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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.texasattorneygeneral.gov/open/>

[orl\\_ruling\\_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas A. Ybarra". The signature is fluid and cursive, with a large initial "N" and a stylized "Y" at the end.

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 493540

Enc. Submitted documents

c: Requestor  
(w/o enclosures)