



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2013

Mr. Jonathan Miles
DFPS Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030, Department Mail Code E611
Austin, Texas 78714-9030

OR2013-17687

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# 504082 (DFPS Reference No. 08192013WFQ).

The Texas Department of Family and Protective Services (the "department") received a request for closed Adult Protective Services ("APS") complaints or investigations related to certain named individuals or certain unlicensed group home addresses in the Houston area. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. Section 48.101 of the Human Resources Code provides in pertinent part as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 records were developed as part of APS investigations conducted under chapter 48 of the Human Resources Code. 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 id.* § 48.101(b)-(g) (permitting release of confidential information only in certain circumstances); *see also* 40 T.A.C. §§ 705.7107, .7109. You inform this office that none of the access provisions apply to this requestor. Furthermore, we have no information to allow us to conclude the requestor in this case has a right under law to obtain the information at issue. Based on your representations and our review of the records, we agree the submitted information is confidential under section 48.101 of the Human Resources Code and the department must withhold the information under section 552.101 of the Government Code.

Finally, you request that this office issue a previous determination that would permit the department in the future to withhold from disclosure information made confidential under section 48.101 without the need of requesting a ruling from us about whether such information can be withheld from disclosure. 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.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 'T. Strain', with a stylized flourish at the end.

Tamara R. Strain
Assistant Attorney General
Open Records Division

TRS/bhf

Ref: ID# 504082

Enc. Submitted documents

c: Requestor
(w/o enclosures)