



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2013

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2013-18126

Dear Mr. Bilbie:

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# 502622.

The Harlingen Police Department (the "department") received a request for information pertaining to reports pertaining to named individuals that occurred at a specified location during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim.

In this instance, the requestor is a representative of the Adult Protective Services ("APS") division of the Texas Department of Family and Protective Services ("DFPS").¹ Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. See Hum. Res. Code §§ 48.151, .152. Section 48.154 of the Human Resources Code provides in part:

¹See 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.").

(a) The [DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the [DFPS]'s or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person, agency, or institution that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or state agency that requested the record or document.

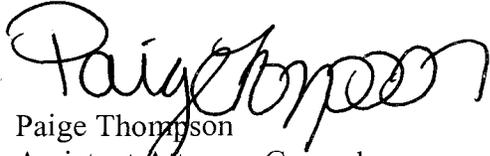
Id. § 48.154(a). The request for information reflects the requestor seeks the requested information for purposes of an APS investigation. Consequently, we understand that DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include the investigation of abuse, neglect, or exploitation of a disabled person. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the requested information under section 48.154 of the Human Resources Code. You seek to withhold the requested information under section 552.101 of the Government Code in conjunction with common-law privacy. We note a statutory right of access generally prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). In addition, a specific statutory right-of-access provision generally prevails over the Act's general exceptions to disclosure, such as section 552.108. *See Open Records Decision Nos. 623 at 3 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* Thus, the department may not withhold any of the information under section 552.101 in conjunction with common-law privacy or section 552.108. Therefore, the department must release the information to the requestor pursuant to section 48.154(a) of the Human Resources Code.²

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.

²Because the requestor has a special right of access under section 48.154 to information that would ordinarily be protected by section 552.101 of the Government Code, the department must request another ruling if it receives a request for this same information from another requestor. *See Gov't Code* §§ 552.301, .302.

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 that reads "Paige Thompson". The signature is written in a cursive style with a large initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 502622

Enc. Submitted documents

c: Requestor
(w/o enclosures)