



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2014

Mr. Marc Allen Connelly
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2014-13557

Dear Mr. Connelly:

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# 531824.

The Texas Department of State Health Services (the "department") received a request for the Corrective Action Plan submitted to the department by the Alice Counseling Center. 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as 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.

Hum. Res. Code § 48.101(a), (b). Section 48.101 makes confidential information used or developed in an investigation made under chapter 48 of the Human Resources Code. *See id.* § 48.101(a); 25 T.A.C. § 1.207(a). Chapter 48 regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.051. For purposes of chapter 48, a disabled person means “a person with a mental, physical, or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s care or protection and who is 18 years of age or older; or under 18 years of age and who has had the disabilities of minority removed.” *Id.* § 48.002(a)(8). You state the submitted information was created in response to and as part of an investigation by the department conducted under chapter 48 of the Human Resources Code. You explain “the responsive Plan of Correction . . . was submitted by the [department]-licensed treatment facility to the [department’s] investigative unit and constitutes part of the investigative process and a communication developed in conjunction with that investigation.” You further explain “[t]here are often a series of communications with the investigator concerning a Plan of Correction before a Plan of Correction is [‘]accepted[’] for purposes of finally concluding the investigative phase of a case.” Accordingly, we understand you to assert the investigation is ongoing pending the acceptance of the Plan of Correction by the department. Based on your representations and our review, we agree the submitted information was used or developed in an investigation made under chapter 48 into the alleged exploitation of disabled persons. *See id.* § 48.002(a)(3) (defining “exploitation” for purposes of chapter 48). Thus, the submitted information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by an investigating state agency rule or federal law. *See id.* § 48.101(b)-(g) (permitting release of confidential information only in certain circumstances); 25 T.A.C. § 1.207. You do not indicate, nor does it appear, 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.¹

¹As 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.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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/eb

Ref: ID# 531824

Enc. Submitted documents

c: Requestor
(w/o enclosures)