



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2014

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

OR2014-17178

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# 537379 (DFPS ORR No. 070820142ZN).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a named individual. 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 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, such as section 48.101 of the Human Resources Code, which provides:

¹We assume 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.

Hum. Res. Code § 48.101(a), (b). You state the submitted information consists of an investigation of abuse or neglect of an Adult Protective Services's ("APS") client 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 and 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). In this instance, the requestor is one of the alleged perpetrators. Subchapter M of chapter 705 of title 40 of the Texas Administrative Code was adopted by the executive commissioner of the Texas Health and Human Services Commission (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 APS 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(b) 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. However, the information that does not pertain to the requestor, which you have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 537379

Enc. Submitted documents

c: Requestor
(w/o enclosures)