



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 26, 1997

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR97-0632

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104689.

The Texas Department of Health (the "department") received an open records request for "copies of any reports, correspondence, monetary penalties, disciplinary letters or other documentation generated as a result of the investigation related to Complaint No. 96-20749." You have submitted to this office for review the responsive documents, which you contend are confidential under section 48.101 of the Human Resource Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the information submitted.

Chapter 48 of the Human Resource Code pertains to protective services for elderly and disabled persons. Section 48.082 of the Human Resource Code provides in pertinent part:

(a) If a person has reasonable cause to believe that an elderly or disabled person has been abused, exploited, or neglected in a facility operated, licensed, certified, or registered by a state agency other than the Texas Department of Mental Health and Mental Retardation, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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(c) A state agency that receives a report under this section shall make a thorough investigation promptly after receiving a report that an elderly or disabled person has been or may be abused, exploited, or neglected in a facility operated, licensed, certified, or registered by the agency.<sup>2</sup> The primary purpose of the investigation is the protection of the elderly or disabled person.

(d) The state agency shall prepare and keep on file a complete written report of each investigation conducted by the state agency under this section. [Footnote added.]

Section 48.101 of the Human Resource Code provides in pertinent part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (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.

The documents you have submitted to this office for review clearly constitute "files, reports, records, communications, and working papers used or developed in an investigation" under chapter 48 of the Human Resource Code. Further, you have not advised this office, nor is it apparent from the open records request, that the requestor has a special right of access to any of these records pursuant to section 484.101(d). We therefore conclude, based on the facts before us, that the department must withhold these records in their entirety pursuant to section 552.101 of the Government Code.<sup>3</sup>

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<sup>2</sup>For purposes of this ruling, we assume the facility that is the subject of this investigation is "a facility operated, licensed, certified, or registered by" the department.

<sup>3</sup>We note that although the department did not request an open records decision from this office within the ten days following the department's receipt of the open records request, the confidentiality conferred on these records by section 48.101 constitutes a "compelling" reason for non-disclosure that overcomes the legal presumption that the records are public information. See Gov't Code § 552.302; Open Records Decision No. 150 (1977).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/glg

Ref.: ID# 104689

Enclosures: Submitted documents

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(w/o enclosures)

