

CAUSE NO. GN201919

TEXAS DEPARTMENT OF  
HUMAN SERVICES,  
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL  
OF TEXAS,  
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

FILED

05 APR '06 PM 1:56

*Marianne T. Kelly*

DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for entry of an agreed final judgment. By this motion, Plaintiff Texas Department of Human Services, through its successor in interest Texas Department of Aging and Disability Services (DADS), and Defendant Greg Abbott, Attorney General of Texas, announce to the Court that all matters of fact and things in controversy between them have been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Patrick E. Gaas, was sent reasonable notice of this setting and of the parties' agreement that DADS must withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Information identifying those persons or location described in Tex. Hum. Res. Code

1. Information identifying those persons or location described in Tex. Hum. Res. Code § 51.007, as marked by the Office of the Attorney General (identifying information), in the complaints responsive to Mr. Gaas' request, is confidential by Tex. Hum. Res. Code § 51.007 and, therefore, is excepted from disclosure by Tex. Gov't Code § 552.101.

2. The Texas Health and Human Services Commission shall withhold from the requestor the identifying information and shall disclose to the requestor a redacted version of the complaints with the remaining information unredacted, except for information that the Attorney General concluded in Letter Ruling OR2002-2557 was excepted from disclosure.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 6 day of April, 2005.

  
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PRESIDING JUDGE

APPROVED:

  
\_\_\_\_\_  
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\_\_\_\_\_  
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ATTORNEY FOR DEFENDANT



May 14, 2002

Ms. Margaret A. Roll  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2002-2557

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162127.

The Texas Department of Human Services (the “department”) received a request for a copy of a recent complaint against Family Time Foundation. You state that some responsive information has been released to the requestor. You claim that the remainder of 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 information. We have also considered the comments submitted by the requestor. *See Gov’t Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 51.007 of the Human Resources Code provides:

The department may not disclose any information gained through reports, collected case data, or inspections that would identify a particular center or a person working at or receiving services at a family violence center.

You have submitted two complaint letters for our review. The statute you have raised by its own terms states that the department must withhold identifying information gained through reports, collected case data, or inspections. Pursuant to section 552.303, we asked you to explain in detail how the department gained the submitted information through reports, collected case data, or inspections. *See Gov’t Code § 552.303(b), (c)* (providing that this

office may request additional information necessary to render a decision). In response, you contend that, as “communication[s] to the department of a person’s concern about an activity,” the submitted complaints constitute “reports,” analogous to the reports of possible abuse or neglect required under sections 242.122 of the Health and Safety Code and 48.051 of the Human Resources Code.

Sections 242.122 and 48.051 specifically address required reports of abuse or neglect. In the context of these statutes, information contained in a complaint could be equivalent to a report of abuse or neglect. Section 51.007 of the Human Resources Code, in contrast, provides for the confidentiality of identifying information “gained through reports.” The preceding provision, section 51.006, requires the department to publish a biennial report to the governor and legislature summarizing reports from family violence centers under contract with the department and analyzing the effectiveness of such contracts. Hum. Res. Code § 51.006. The family violence centers’ reports to the department must include information on the expenditure of authorized funds, services provided, and statistical summary information. *Id.* Based on our review of section 51.007 in the context of other provisions of the chapter, it appears that the term “report” as used in this section refers to the reports of family violence shelters contemplated in section 51.006. Accordingly, it appears that the term does not encompass complaints of the kind you have submitted for our review. *See* Hum. Res. Code §§ 51.006, .007. Thus, we determine that the submitted information cannot be withheld under section 552.101 in conjunction with section 51.007 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review, we determine that a portion of the submitted information, which we have marked, is protected by common-law privacy and must be withheld under section 552.101 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/sdk

Ref: ID# 162127

Enc: Submitted documents

c: Mr. Patrick E. Gaas  
Brewer & Pritchard  
Three Riverway, 18<sup>th</sup> Floor  
Houston, Texas 77056  
(w/o enclosures)