



August 27, 2002

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-4767

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167688.

The El Paso Police Department (the “department”) received a request for investigative records and photographs relating to injuries suffered by the requestor’s client. The department claims that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹ We also received written comments from the requestor. *See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. The department raises section 552.101 in conjunction with section 48.101 of the Human Resources Code. Chapter 48 of the Human Resources Code governs investigations of abuse, neglect, or exploitation of elderly or disabled persons. Section 48.101 provides in part:

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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.

(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). We note that the submitted information relates to an investigation of injuries suffered by a disabled person. You indicate that the department provided this information to Adult Protective Services in El Paso. Based on your representation and our review of the submitted information, we find that this information comes within the scope of section 48.101 of the Human Resources Code. We therefore conclude that this information is excepted from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.² As we are able to make this determination, we need not address section 552.108.

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

²We note that section 48.101 of the Human Resources Code authorizes the Texas Department of Protective and Regulatory Services or other investigating state agency to provide by rule for the release of otherwise confidential information that relates to a report of abuse, neglect, or exploitation. *See* Hum. Res. Code § 48.101(d).

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

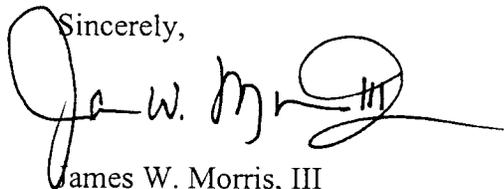
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 167688

Enc: Submitted documents

c: Mr. Victor N. Makris
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(w/o enclosures)