ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2005

Ms. Karen Hattaway
Open Records Attorney
Texas Department of Aging and Disability Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2005-08413

Dear Ms. Hattaway:

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# 232274.

The Texas Department of Aging and Disability Services (the "department") received a request for a specific allegation packet. You claim that 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 section encompasses information protected by other statutes. The department claims that the submitted information is confidential under section 48.101 of the Human Resources Code, which provides in relevant 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.

Hum. Res. Code § 48.101(a). You state that the submitted documents constitute investigative documents used or developed in an investigation of alleged abuse. Thus, the confidentiality provisions of section 48.101 apply to submitted documents.

You state, however, that the requestor of the information is the state school employee accused of the abuse. Section 48.101(d) provides:

> The department or investigating state agency *by rule* shall provide for the release on request to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure. [Emphasis added.]

Hum. Res. Code § 48.101(d). Pursuant to section 48.101(d), the department promulgated administrative rules regarding an employee's right of access to investigatory materials. Section 417.512(d) of title 25 of the Texas Administrative Code provides in pertinent part:

> (d) When disciplinary action is taken against an employee based on confirmed abuse or neglect, the head of a facility notifies the employee in writing of the disciplinary action taken and any right to a grievance hearing the employee may have under [the department]'s internal policies and procedures relating to employee grievances. If the employee files a grievance in response to disciplinary action resulting from confirmed abuse or neglect, the head of the facility, upon the employee's written request, provides the employee with a copy of or access to the investigative report.

25 T.A.C. § 417.512(d). In this instance, you inform us that disciplinary action was taken against the employee as a result of confirmed abuse. However, because the employee was a probationary employee, he did not have the right to file a grievance in response to the disciplinary action. Accordingly, as the requestor is not an employee who filed a grievance in regard to this matter, he does not have a right of access to the records at issue pursuant to section 417.512. Thus, we find that the department must withhold the submitted documents in their entirety pursuant to section 48.101 of the Human Resources Code in conjunction with section 552.101 of the Government Code. Because our ruling is dispositive, we need not address your remaining argument.

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).

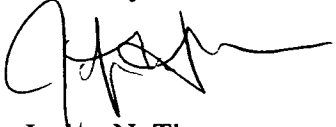
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 232274

Enc. Submitted documents

c: Scott Widmer
1606 E. McKinney, Apt. 6105
Denton, Texas 76209-7507
(w/o enclosures)