



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2007

Mr. Brett Norbraten
Open Records Attorney
Texas Department of Aging and Disability
P.O. Box 149030
Austin, Texas 78714-9030

OR2007-06853

Dear Mr. Norbraten:

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#280236.

The Texas Department of Aging and Disability (the "department") received a request for the requestor's employment file, and documents pertaining to the requestor's termination. 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.

Initially, you state that the submitted information may not be responsive to the request for information because the requestor was not terminated. You also state, however, that the department has information responsive to the requestor's employment, and you have submitted arguments against disclosure of this information. A governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds information on behalf of the governmental body that received the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). As you have identified and submitted information which is responsive to the request, we will determine whether you must release this information to the requestor.

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. Section 595.001 of the Health and Safety Code provides that “[r]ecords of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to mental retardation are confidential and may be disclosed only for the purposes and under the circumstances authorized under Sections 595.003 and 595.004.” Health & Safety Code § 595.001. You state that the submitted documents are “records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the [Abilene] State School’s provision of mental retardation services to the person.” Although the requestor is an employee of the Abilene State School, you assert the requestor has not demonstrated that he has a right of access to the submitted records under section 595.003 or 595.004 of the Health and Safety Code. Having considered your representations and reviewed the submitted records, we agree that some of the submitted information is confidential under section 595.001 of the Health and Safety Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 also encompasses section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in facilities operated by the department. Section 48.101 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.

(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). Upon review, we agree that the remaining information consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48 or in providing services as a result of an investigation. We note that such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state

agency rule or federal law. *See id.* § 48.101(b). But *see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. You state that none of the exceptions in section 1.207 of title 25 of the Texas Administrative Code are applicable in this instance. Accordingly, based on your representations and our review, we conclude that the department must withhold the remaining information pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

In summary, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code and section 48.101 of the Human Resources Code.¹

The department requests a previous determination that “information on state school clients” be exempt from public disclosure under the Act. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; and 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).

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID# 280236

Enc. Submitted documents

c: Mr. Samuel Mehaffey
Mehaffey & Watson
2441 South 1st Street
Abilene, Texas 79605
(w/o enclosures)