ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2007

Ms. Patricia Fernandez
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2007-13534

Dear Ms. Fernandez:

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# 291851.

The Texas Department of Family and Protective Services (the "DFPS") received a request for the completed investigation report concerning a specific incident. You claim that 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.[1]

Section 552.101 of the Government Code 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. Chapter 48 of the Human Resources Code regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. Section 48.101 makes the following information confidential:

> (1) a report of abuse, neglect, or exploitation made under [chapter 48];
>
> (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

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> made under this chapter or in providing services as a result of an investigation.

Human Res. Code § 48.101(a). You state that the submitted documents are working papers and records developed during an investigation into abuse, neglect, or exploitation which you indicate was conducted pursuant to chapter 48 of the Human Resources Code. 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) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. Based on your representations and our review of the submitted information, we agree that the submitted information is confidential under section 48.101. *See* Human Res. Code § 48.101(b); Attorney General Opinion JM-851 (1988) (confidentiality of adult protective services records continues after client's death). You state the requestor does not have a right of access to this information. *See* Human Res. Code § 48.101(c); 25 T.A.C. § 1.207. Accordingly, we conclude that DFPS must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

You ask that this ruling serve as a previous determination that Adult Protective Services files are confidential and may only be released to statutorily authorized individuals. 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).

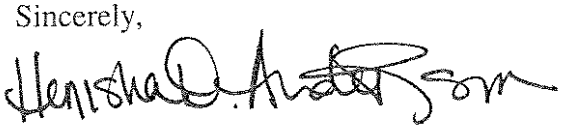
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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).

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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/jb

Ref: ID# 291851

Enc. Submitted documents

c: Mr. Chito Vela
c/o Ms. Patricia Fernandez
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(w/o enclosures)