



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2009

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

OR2009-08824

Dear Ms. Hengen:

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# 347383.

The El Paso Police Department (the "department") received a request for a specified incident report and any video recording pertaining to the report. 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 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. Section 552.101 encompasses information made confidential by other statutes. You contend that the submitted report and video are confidential under 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 certain facilities. Section 48.101 provides in pertinent part as follows:

- (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 [the Texas Department of Family and Protective Services] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are the Department of Family and Protective Services and certain other state agencies, depending on the circumstances surrounding the incident.¹ *See id.* §§ 48.151, 48.152, 48.252, 48.301. Thus, records of a police department investigation generally are not subject to section 48.101. The submitted information relates to the department's investigation into allegations of exploitation. However, we have received correspondence from a representative of the Adult Protective Services Division of the Department of Family and Protective Services (the "division"), stating the division's investigation under Chapter 48 was jointly conducted by the division and the department, and that it "was of the same type, involved the same facts and allegations, and used the same information as that gathered by the [department]." Because the Legislature expressly made all information used by the division in its Chapter 48 investigation confidential, we agree that the submitted information is confidential under section 48.101. *See id.* § 48.101(a)(3). 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* Hum. Res. Code § 48.101(b). *But see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude that the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.²

¹In 2005, the Department of Protective and Regulatory Services was renamed the Department of Family and Protective Services. *See* Act of May 29, 2005, 79th Leg., R.S., ch. 268, §§ 1.74, 1.75, 2005 Tex. Gen. Laws 621, 661.

²As our ruling is dispositive, we do not address your remaining arguments under section 552.101 of the Government Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/rl

Ref: ID# 347383

Enc. Submitted documents

c: Requestor
(w/o enclosures)