



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2009

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

OR2009-16579

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# 362004 (DADS # 2009SOLEG0170).

The Texas Department of Aging and Disability Services (the "department") received a request for four categories of information related to sexual abuse allegations at a specified state school, including the personnel files of all employees involved in the alleged abuse. 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, we note that you have not submitted any of the requested personnel files. Therefore, to the extent the department maintained any responsive personnel files on the date it received the request, we assume it has already released such information. If the department has not released any such information, it must do so at this time. *See* Gov't Code § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible). If you believe any such information is confidential and may not lawfully be released, the department must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by

judicial decision.” Gov’t Code § 552.101. This section encompasses statutory confidentiality provisions. You contend that Exhibit A is 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:

(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). You indicate that the Texas Department of Family and Protective Services investigative report marked as Exhibit A relates to an investigation made under chapter 48 of the Human Resources Code. *See id.* § 48.252(a)(1), 40 T.A.C. § 711.1. Based upon your representations and our review, we find that Exhibit A consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48. 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)-(g) (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 Exhibit A in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 also encompasses section 595.001 of the Health and Safety Code, which 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 Exhibit B pertains to the identity, diagnosis, evaluation, or

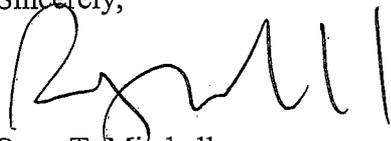
treatment of a state school client. You also assert that the release provisions set forth in sections 595.003 and 595.004 of the Health and Safety Code are inapplicable here. Having considered your representations and reviewed the submitted records, we agree that Exhibit B is confidential under section 595.001; therefore, the department must withhold this information under section 552.101 of the Government Code.

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

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, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/dls

Ref: ID# 362004

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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