



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2010

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

OR2010-08598

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# 382539 (DADS tracking no. 2010SOLEG0050).

The Department of Aging and Disability Services (the "department") received a request for information related to the investigation of a March 8, 2010, complaint filed against the requestor. You state the department has released or will release a portion of the requested information to the requestor. You claim 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 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 B 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 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 department or investigating state agency rule and applicable federal law.

...

(d) The executive commissioner [of the Texas Health and Human Services Commission] shall adopt rules providing 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.

Hum. Res. Code § 48.101(a), (b), (d). You state the Texas Department of Family and Protective Services ("DFPS") investigative report in Exhibit B relates to an investigation conducted under chapter 48 of the Human Resources Code. *See id.* § 48.252(a)(1), 40 T.A.C. § 711.1. Based upon your representation and our review, we agree Exhibit B consists of a report used or developed in an investigation 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-g) (permitting release of confidential information only in certain circumstances). In this instance, the requestor is the alleged perpetrator. Thus, pursuant to section 48.101(d), this report is subject to release pursuant to rules adopted by the executive commissioner of the Texas Health and Human Services Commission (the "commissioner"). Subchapter M of chapter 705 of title 40 of the Texas Administrative Code was adopted by the commissioner to explain to whom and under what circumstances case records made confidential under section 48.101 may be released. 40 T.A.C. § 705.7101. Section 705.7107 of that subchapter provides in relevant part:

Upon request and to the extent required by state or federal law, DFPS must make case records or portions of case records available after appropriate redactions to the following persons:

- (3) An alleged or designated perpetrator of abuse, neglect, or exploitation of an [Adult Protective Services] client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator[.]

*Id.* § 705.7107. As noted above, the requestor in this instance is the alleged perpetrator in the DFPS investigative report. Consequently, pursuant to section 48.101(d) of the Human Resources Code in conjunction with section 705.7107(3) of title 40 of the Texas Administrative Code, the department must release all information from the DFPS investigative report in Exhibit B that pertains to the requestor. We note you claim the alleged victim's name in this report is confidential under section 595.001 of the Health and Safety Code. However, because the alleged victim's name does not pertain to the requestor, this information must be withheld along with the other information in Exhibit B that does not relate to the requestor under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code.<sup>1</sup>

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 Exhibit A, which consists of an Unusual Incident Report, pertains to the identity, diagnosis, evaluation, or treatment of a client of the Denton State-Supported Living Center (the "center"). You represent the center is a mental retardation program. You also represent the release provisions set forth in sections 595.003 and 595.004 of the Health and Safety Code are inapplicable in this instance. Having considered your representations and reviewed the submitted records, we agree Exhibit A falls within the scope of section 595.001. Accordingly, we agree Exhibit A is confidential under section 595.001 of the Health and Safety Code and it must be withheld under section 552.101 of the Government Code.

In summary, the department must release the information in Exhibit B that pertains directly to the requestor pursuant to section 48.101(d) of the Human Resources Code in conjunction

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<sup>1</sup>As our ruling is dispositive for Exhibit B, we need not address your remaining argument against disclosure for this information.

with section 705.7107(3) of title 40 of the Texas Administrative Code. The remaining information in Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code. Exhibit A must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety 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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 382539

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)