



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2013

Mr. Jonathan Miles
Open Government Attorney
Texas Department of Family and Protective Services
Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2013-12453

Dear Mr. Miles:

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# 493817 (DFPS ORR Reference No. 04162013RMB).

The Texas Department of Family and Protective Services (the "department") received a request for five categories of information related to complaints filed against two named individuals.¹ You state the department does not have information responsive to a portion of the request.² You claim some of 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.

¹You state the department sought and received clarification of the information requested. *See Gov't Code* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

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 information other statutes make confidential. Section 48.101 of the Human Resources Code provides in pertinent part as follows:

(a) The following information is confidential and not subject to disclosure under [the Act]:

(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 some of the submitted records were developed as part of an Adult Protective Services (“APS”) investigation conducted under chapter 48 of the Human Resources Code. 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)-(g) (permitting release of confidential information only in certain circumstances); *see also* 40 T.A.C. §§ 705.7107, .7109. You seek to withhold the identity of the reporting party and information concerning alleged abuse contained in the APS records. You do not inform this office that any of the access provisions apply. Furthermore, we have no information to allow us to conclude the requestor in this case has a right under law to obtain the information at

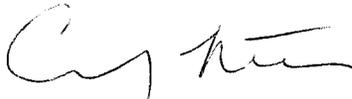
issue. Based on your representations and our review of the records, we agree the information you have marked is confidential under section 48.101 of the Human Resources Code and the department must withhold the information under section 552.101 of the Government Code.³

Finally, you request that this office issue a previous determination that would permit the department in the future to withhold from disclosure information made confidential under section 48.101 without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 493817

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining claim.