



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2014

Mr. David Way
Associate Executive Director
Gulf Bend Center
6502 Nursery Drive, Suite 100
Victoria, Texas 77904

OR2014-02418

Dear Mr. Way:

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# 513504.

The Gulf Bend Community Center (the "center") received a request for seven categories of information relating to the requestor's employment and termination and three categories of information relating to a specified investigation. We note you have released some information to the requestor. You indicate you do not have information responsive to portions of the requested information.¹ 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 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 protected by other statutes, such as section 48.101 of the Human Resources Code, which provides in 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;

¹The 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), 452 at 3 (1986), 362 at 2 (1983).

(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 (the "DFPS")] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). You assert, and we agree, the information we have marked consists of information used or developed by DFPS in an investigation conducted under chapter 48 of the Human Resources Code. *See id.* § 48.252(a)(1) (authorizing DFPS to conduct investigations in mental health facilities operated by the department); 40 T.A.C. § 711.1 (relating to chapter 48 of the Human Resources Code investigations in department facilities). Such information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by a DFPS or investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c)-(f) (permitting release of confidential information in certain circumstances). You do not indicate, nor does it appear, an exception to confidentiality applies in this instance. Accordingly, we conclude the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.²

Section 552.101 also encompasses information protected by section 595.001 of the Health and Safety Code, which reads as follows:

Records 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 [of the Health and Safety Code].

Health & Safety Code § 595.001. You state the remaining information consists of records of the center pertaining to the identity, diagnosis, evaluation, or treatment of a client of the center. You state the center is a community mental health center as defined in section 534.001 of the Health and Safety Code. *See id.* § 534.001. You also assert the release provisions set forth in sections 595.003 and 595.004 are inapplicable here. Based on your representations and our review, we agree the remaining information is confidential under section 595.001. Therefore, the center must withhold the remaining information under

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

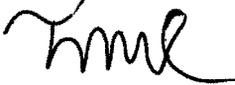
section 552.101 of the Government Code in conjunction with section 595.001 of the Health and Safety Code.³

In summary, the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. The center must withhold the remaining information 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 513504

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.