



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 12, 2014

Mr. Marc Allen Connelly  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2014-14045

Dear Mr. Connelly:

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# 532410 (DSHS File No. 22970/2014).

The Texas Department of State Health Services (the "department") received a request for information concerning the Sante Center for Healing. You state the department will redact information pursuant to Open Records Decision No. 684 (2009) and Open Records Letter No. 2003-4169 (2003).<sup>1</sup> 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 representative sample of information.<sup>2</sup>

Initially, you state the department sought clarification of the information requested. *See* Gov't Code § 552.222 (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

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<sup>1</sup>Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684. Open Records Letter No. 2003-4169 was issued to the Texas Commission on Alcohol and Drug Abuse, one of the department's legacy agencies whose powers, duties, and functions, as applicable to the Open Records Letter Ruling, were transferred to the department pursuant to HB 2292, 78th Leg., R.S. (2003).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). You inform us the requestor has not responded to the request for clarification. Nonetheless, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). Because you have submitted information for our review, we understand the department has made a good-faith effort to determine the submitted information is responsive to the request. Therefore, we will address the applicability of the claimed exception to the submitted information. We further determine the department has no obligation at this time to release any additional information that may be responsive to the portion of the request for which the department has not received clarification. However, if the requestor responds to the request for clarification, the department must seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

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 section 48.101 of the Human Resources Code, which provides:

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

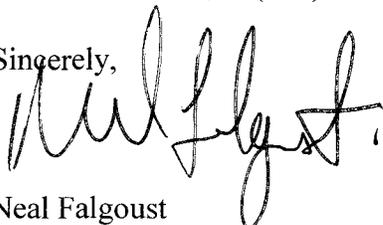
(d) The executive commissioner [of the Texas Health and Human Services Commission] shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person’s legal representative of otherwise confidential information relating 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 information at issue was developed as part of an investigation by the department conducted under chapter 48 of the Human Resources Code. Section 48.101 makes confidential information used or developed in an investigation made under chapter 48 of the Human Resources Code. *See id.* § 48.101 (a); 25 T.A.C. § 1.207(a). Chapter 48 regulates the investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.051. For purposes of chapter 48, a disabled person means “a person with a mental, physical, or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s care or protection and who is 18 years of age or older; or under 18 years of age and who has had the disabilities of minority removed.” *Id.* § 48.002(a)(8). Based on your representations and our review, we agree the submitted information was used or developed in an investigation made under chapter 48. Thus, the submitted information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by an investigating state agency rule or federal law. *See id.* § 48.101(b)–(g) (permitting release of confidential information only in certain circumstances); 25 T.A.C. § 1.207. You do not indicate, nor does it appear, an exception to confidentiality applies in this instance. Accordingly, we conclude the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.<sup>3</sup>

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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining claimed exceptions.

Ref: ID# 532410

Enc. Submitted documents

c: Requestor  
(w/o enclosures)