



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 30, 2015

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

OR2015-06014

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# 557845 (ORR No. 12302014GC9).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a specified case. You inform us the department will redact social security numbers, other than the requestor's, under section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. We note the requestor has a right to his own social security number. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

<sup>2</sup>You acknowledge, and we agree, the department did not comply with the requirements of section 552.301 of the Government Code. *See id.* § 552.301(b), (e). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the department's claim under that section.

<sup>3</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 that submitted to this office.

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, such as 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 department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). You state the submitted information consists of an investigation of abuse or neglect of an Adult Protective Services’ (“APS”) client 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 and 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).

The executive commissioner of the Texas Health and Human Services Commission (the “commissioner”) adopted Subchapter M of chapter 705 of title 40 of the Texas Administrative Code 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, [the department] must make case records or portions of case records available after appropriate redactions to the following persons:

...

- (4) A person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or exploitation. The person is only

entitled to that portion of the investigation record that relates to that person's interview.

*Id.* § 705.7107(4). You state the requestor, as an individual the department interviewed as part of the investigation of an allegation of abuse, neglect, or exploitation, has a right to those portions of the investigation that relate to the requestor's interview under section 705.7107(4). Consequently, pursuant to section 48.101(b) of the Human Resources Code in conjunction with section 705.7107(4) of title 40 of the Texas Administrative Code, we conclude the department must release all information in the submitted documents that pertains to the requestor's interview, which you have marked. However, we conclude the department must withhold the remaining information that does not pertain to the requestor's interview under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources 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](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/akg

Ref: ID# 557845

Enc. Submitted documents

c: Requestor  
(w/o enclosures)