



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2015

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

OR2015-18534

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# 578294 (DFPS ORR No: 06302015SC3).

The Texas Department of Family and Protective Services (the "department") received a request for all written correspondence associated with a specified complaint, a specified case, and complaints involving three specified entities. You state you do not possess some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 information other statutes make confidential. Section 48.101 of the Human Resources Code provides in pertinent part as follows:

¹We note, and the department acknowledges, it did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the exception the department claims can provide a compelling reason to overcome the presumption of openness, we will consider the department's claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

(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 the submitted information consists of an investigation of elder abuse or neglect conducted by Adult Protective Services ("APS") 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). Based on your representations and our review of the records, we agree the submitted information is confidential under section 48.101 of the Human Resources Code. *See id.* § 48.101(b). You inform us the department has promulgated rules concerning the confidentiality of APS records. *See* 40 T.A.C. §§ 705.7107, .7109, .7111. The requestor is not an individual who would have access to the records at issue. *See* Hum. Res. Code § 48.101(d); 40 T.A.C. §§ 705.7107, .7109. Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 48.101 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, 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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 578294

Enc. Submitted documents

c: Requestor
(w/o enclosures)