



January 29, 2015

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

OR2015-01822

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# 551746 (DFPS ORR No. 09182014LYS).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a named individual.¹ You claim portions of the submitted information are 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.²

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by

¹You state the department asked for and received clarification of the request. See Gov't Code § 552.222(b)(providing that if request for information is unclear, governmental body may ask requestor to clarify the 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 overbroad 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).

²We 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 that those records contain substantially different types of information than that submitted to this office.

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’s (“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). In this instance, the requestor is one of the alleged perpetrators. Subchapter M of chapter 705 of title 40 of the Texas Administrative Code was adopted by the executive commissioner of the Texas Health and Human Services Commission (the “commissioner”) 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:

...

- (3) An alleged or designated perpetrator of abuse, neglect, or exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator[.]

Id. § 705.7107(3). As noted above, the requestor is listed as an alleged perpetrator in the submitted report. Consequently, pursuant to section 48.101(b) of the Human Resources Code in conjunction with section 705.7107(3) of title 40 of the Texas Administrative Code, the requestor has a right of access, subject to appropriate redactions, to any information in the submitted report that pertains to the requestor. However, the information that does not pertain to the requestor, which you have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code.

We note, in releasing information pursuant to section 705.7107 of title 40 of the Texas Administrative Code, section 705.7117(c)(3) of title 40 of the Texas Administrative Code provides in relevant part:

(c) [The department] must withhold the release of any records obtained from another source, if the release of that record to this requester [sic] is specifically prohibited under state or federal law. Information which may be withheld under this section includes, but is not limited to, the following:

...

(3) Criminal history or arrest records obtained from law enforcement unless their release to the requester [sic] is specifically authorized under state and federal law[.]

Id. § 705.7117(c)(3). You claim some of the information which pertains to the requestor consists of criminal history record information (“CHRI”) that is confidential under section 411.083 of the Government Code. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency is confidential under section 411.083 of the Government Code.

Upon review, we find the CHRI you have marked is confidential under section 411.083 of the Government Code. Therefore, the department must withhold the CHRI under section

552.101 of the Government Code in conjunction with section 705.7117(c)(3) of title 40 of the Texas Administrative Code.³

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with (1) section 48.101 of the Human Resources Code and (2) section 705.7117(c)(3) of title 40 of the Texas Administrative Code. The department must release the remaining information to this requestor.⁴

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 551746

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor can obtain her own CHRI from DPS. Gov't Code § 411.083(b)(3).

⁴Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. See 40 T.A.C. § 705.7107(3).