



February 27, 2015

Ms. Sylvia Hardman-Dingle
General Counsel
Office of the General Counsel
Texas Department of Assistive & Rehabilitative Services
4800 North Lamar Boulevard, Suite 370
Austin, Texas 78756

OR2015-03909

Dear Ms. Hardman-Dingle:

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# 555035 (DARS PIA No. 201512/05-1).

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for the requestor's consumer file, including any psychological evaluation reports. You state some information was released to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ You also state release of the submitted information may implicate the privacy or proprietary interests of third parties. Accordingly, you state, and provide documentation showing, the department notified the third parties of the request for information and of their rights to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received and considered comments from an interested third party. We have considered the submitted arguments and reviewed the submitted information.

¹Regardless of whether the department failed to comply with section 552.301 of the Government Code in requesting a ruling, we note section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the department's argument under section 552.101.

You argue the submitted psychological evaluation reports are subject to section 552.101 of the Government Code in conjunction with section 361.38 of title 34 of the Code of Federal Regulations. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 361.38 provides for the protection, use, and release of personal information relating to vocational rehabilitation services provided under a state plan. *See* C.F.R. § 361.38. Section 361.38 was promulgated pursuant to chapter 16 of title 29 of the United States Code, which governs the administration of state vocational rehabilitative services. 29 U.S.C. § 709(c). The purposes of chapter 16 include empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through statewide workforce investment systems, among other things. *See id.* § 701(b). Section 361.38 provides, in part:

(b) State program use. All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) Release to applicants and eligible individuals.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, if requested in writing by an applicant or eligible individual, the State unit must make all requested information in that individual’s record of services accessible to and must release the information to the individual or the individual’s representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

34 C.F.R. § 361.38(b), (c)(1)-(2). We understand the department is the “State unit” in Texas responsible for providing vocational rehabilitation, or vocational and other rehabilitation, to individuals with disabilities. *See* 29 U.S.C. § 721(a)(2). Further, pursuant to section 721 of

title 29 of the United States Code, the department, as the Texas State unit, must provide for methods of administration for the proper and efficient administration of the department's program for providing vocational rehabilitation and vocational and other rehabilitation to individuals with disabilities. *See* 29 U.S.C. § 721(a)(6).

You state, under the authority provided to the department as the Texas State unit for rehabilitative services, the department has determined the records at issue to be potentially harmful to the requestor. *See* 34 C.F.R. § 361.38(c)(2). Upon review of the submitted information and arguments, we find that the submitted information may only be released in accordance with section 361.38(c) of title 34 of the Code of Federal Regulations.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 555035

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Richard O. Temple, Ph.D.
Clinical Neuropsychologist
706-B West Ben White Boulevard,
Suite 120-B
Austin, Texas 78704
(w/o enclosures)

Mr. Gary G.F. Yorke, Ph.D.
Licensed Psychologist
Austin Behavioral Health Center
c/o Sylvia Hardman-Dingle
General Counsel
Office of the General Counsel
Texas Department of Assistive &
Rehabilitative Services
4800 North Lamar Boulevard,
Suite 370
Austin, Texas 78756
(w/o enclosures)

Mr. August Dolan-Henderson, Ph.D.
Licensed Psychologist
Austin Counseling & Evaluations
c/o Sylvia Hardman-Dingle
General Counsel
Office of the General Counsel
Texas Department of Assistive &
Rehabilitative Services
4800 North Lamar Boulevard, Suite 370
Austin, Texas 78756
(w/o enclosures)

Ms. Amanda Skonetski, M.A., LPC
Spectrum Services
c/o Sylvia Hardman-Dingle
General Counsel
Office of the General Counsel
Texas Department of Assistive &
Rehabilitative Services
4800 North Lamar Boulevard, Suite 370
Austin, Texas 78756
(w/o enclosures)