



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2017

Ms. Susan E. Tennyson
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2017-00876

Dear Ms. Tennyson:

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# 641445 (DFPS Ref. No. 102020160RB).

The Texas Department of Family and Protective Services (the "department") received a request for the priority level of any report filed for a named individual in Lubbock County during January and February 2016. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107(2), and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from 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 protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state some of the submitted information pertains to investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note, and you acknowledge, in Open Records Letter No. 2003-05590 (2003), this office issued a previous determination allowing the department to withhold records concerning an investigation of abuse or neglect under section 552.101 in conjunction with section 261.201 of the Family Code unless the department’s rules permit the department to release requested records to a particular requestor without first seeking a decision from this office. Based on your representations and our review, and pursuant to Open Records Letter No. 2003-05590, we conclude you must continue to rely on that previous determination, and withhold the information you have marked under section 552.101 in conjunction with section 261.201 of the Family Code.¹

Section 552.101 of the Government Code also encompasses information made confidential by section 48.101 of the Human Resources Code, which provides, in pertinent part:

(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 [department] or investigating state agency rule and applicable federal law.

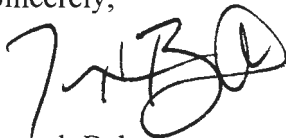
¹As our ruling is dispositive for this information, we need not consider your remaining arguments against its disclosure.

Hum. Res. Code § 48.101(a), (b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subchapter F [of chapter 48 of the Human Resources Code] is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency. *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. You state the information you have marked consists of an investigation of abuse or neglect conducted by DFPS 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 department does not indicate, nor does our review of the information reveal, an exception to confidentiality applies in this instance. Therefore, based on your representations and our review, we agree the information at issue is confidential under section 48.101 of the Human Resources Code. *See id.* § 48.101(b). Accordingly, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.²

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

²As our ruling is dispositive, we need not consider your remaining arguments against disclosure.

Ref: ID# 641445

Enc. Submitted documents

c: Requestor
(w/o enclosures)