



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2019

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2019-04879

Dear Mr. Hernandez:

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# 751789 (ORR#120941).

The Edinburg Police Department (the "department") received a request for a specified incident report. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

The requestor is a representative of the Adult Protective Services ("APS") division of the Texas Department of Family and Protective Services ("DFPS"). Under chapter 48 of the Human Resources Code, DFPS's duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154(a) of the Human Resources Code provides as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]'s or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state

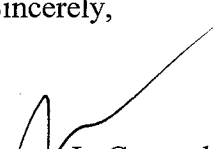
agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). We understand APS seeks the records at issue as part of an investigation. Consequently, we conclude DFPS requires this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of an elderly person. *See id.* §§ 48.151, .152, .154(a). Thus, the requestor generally has a right of access to the information pursuant to section 48.154. Although the department asserts some of the information is confidential under common-law privacy, a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department must release the submitted information pursuant to section 48.154 of the Human Resources Code.¹

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

¹Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 751789

Enc. Submitted documents

c: Requestor
(w/o enclosures)