



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2020

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-02590

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# 808574 (HHSC Ref. No. 20067).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified investigation. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 40.005 of the Human Resources Code authorizes the Texas Department of Family and Protective Services (the "department")² to adopt rules for the purpose of preserving the confidentiality of information and provides in part:

(a) The [department] shall establish and enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

¹We note, and you acknowledge, the commission did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider your claim under that section.

²We note the Eighty-Fourth Legislature passed Senate Bill 200, which as of September 1, 2017, transferred certain investigation functions of the department to the commission, including certain adult protective services investigations.

(b) The department shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department's programs and must comply with applicable state and federal law and department rules.

Hum. Res. Code § 40.005(a)-(b). Rules governing department investigations of facilities that were operated by the Texas Department of Aging and Disability Services ("DADS") are found at chapter 711 of title 26 of the Texas Administrative Code. The department promulgated section 711.601 of title 26 of the Texas Administrative Code in accordance with section 40.005 of the Human Resources Code to make confidential records related to investigations of DADS facilities. Section 711.601 provides, "The reports, records, and working papers used by or developed in the investigative process, and the resulting investigative report, are confidential and may be disclosed only as allowed by law or this chapter." 26 T.A.C. § 711.601. The submitted information relates to a commission investigation of abuse or neglect at a facility operated by DADS. Thus, we find the submitted information is subject to section 711.601. Section 711.605 of title 26 of the Texas Administrative Code lists the parties to whom the investigator sends a copy of the confidential investigative report pertaining to an investigation of a DADS facility. *Id.* § 711.605. You inform us the requestor is not one of the entities that is entitled to receive a copy of the investigative report. Upon review, therefore, we find the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 711.601 of title 26 of the Texas Administrative 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick
Attorney
Open Records Division

SMC/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)