



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2022

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

OR2022-21175

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# 960571 (HHSC Reference No. A04202022.0450003).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified Adult Protective Services ("APS") provider investigation.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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]:

¹You state the commission sought clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify 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 information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

- (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 of Family and Protective Services ("DFPS")] or investigating state agency rule and applicable federal law.

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 [DFPS] or another appropriate state agency.² *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 inform us the submitted information consists of an investigation of elder abuse, neglect, or financial exploitation by an APS services provider conducted by the commission under chapter 48 of the Human Resources Code. *See id.* §§ 48.251-48.258. Such information must not be released to the public, except for a purpose consistent with chapter 48 and as provided by a DFPS or investigating state agency rule or federal law. *See id.* § 48.101(b)-(g) (permitting release of confidential information only in certain circumstances). You inform us rules have been promulgated rules concerning the confidentiality of these APS records. *See* 40 T.A.C. §§ 705.1907-.1925. Section 705.1907 of Title 40 of the Texas Administrative Code provides in relevant part:

Upon request and to the extent required by state or federal law, DFPS makes the case records or portions of case records for a living APS client available after appropriate redactions to the following persons:

...

- (5) an alleged or designated perpetrator of abuse, neglect, or financial exploitation of an APS client. The perpetrator is only

²You inform us the Eighty-Fourth Legislature passed legislation, which as of September 1, 2017, transferred certain investigation functions of the DFPS to the commission, including investigations of APS services providers.

entitled to those portions of the investigation records that relate to the alleged or designated perpetrator[.]

Id. § 705.1907(5). You inform us the requestor is an alleged or designated perpetrator for purposes of section 705.1907(5), and, thus, she is entitled to receive a copy of those portions of the submitted information that relate to the requestor. *See* Hum. Res. Code § 48.101(b); 40 T.A.C. §§ 705.1907(5), .1911(a)(1) (case records may not be released until investigation complete). We understand the commission has provided the requestor with the procedures and form with which to obtain this information pursuant to section 705.1919 of title 40 of the Texas Administrative Code. *See* 40 T.A.C. §§ 705.1911(a)(2) (case records may not be released until proper request received, if required), .1919(c) (providing procedures for requesting access to case records). Therefore, we conclude the commission must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 48.101(a) of the Human Resources Code; however, the commission must release the information related to the requestor pursuant to section 705.1907(5) and in accordance with the procedures set forth in section 705.1919 of title 40 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 Nottingham
Assistant Attorney General
Open Records Division

SN/jm

Ref: ID# 960571

Enc. Submitted documents

c: Requestor
(w/o enclosures)