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ATTORNEY GENERAL OF TEXAS

December 7, 2022

Ms. Susan E. Tennyson
Open Government Attorney
Texas Department of Family and Protective Services
Department Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2022-37945

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# 984756 (Ref. No. R002715-091922).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to specified types of cases involving the requestor. You claim 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]:

- (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.

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 department 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 the department and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301.

You assert the information at issue is part of investigations of abuse or neglect conducted by the department 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). Based on your representations and our review, we agree the information at issue is generally confidential under section 48.101 of the Human Resources Code. *See id.* § 48.101(b). You inform us rules have been promulgated concerning the confidentiality of these Adult Protective Services (“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, [the department] 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 entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; [and]

(6) a person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or financial exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

Id. § 705.1907(5)-(6). We note the requestor is an alleged or designated perpetrator for purposes of section 705.1907(5) with respect to case number 43595722. Additionally, we note the requestor is an individual the department interviewed as part of an APS investigation for purposes of section 705.1907(6) with respect to case number 43834657. Thus, the requestor is entitled to receive a copy of the portions of the investigations that relate to the requestor. *See* Hum. Res. Code § 48.101(b); 40 T.A.C. §§ 705.1907(5)-(6), .1911(a)(1) (case records may not be released until investigation complete). You state the department 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). Accordingly, we conclude the department 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 department must release the information related to the requestor within the investigations at issue pursuant to sections 705.1907(5) and 705.1907(6) of Title 40 of the Texas Administrative Code 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/pt

Ref: ID# 984756

c: Requestor