



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2006

Mr. W. Montgomery Meitler  
Open Records Attorney  
Texas Department of Family and Protective Services  
P. O. Box 149030  
Austin, Texas 78714-9030

OR2006-13929

Dear Mr. Meitler:

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#264392.

The Texas Department of Family and Protective Services ("DFPS") received a request for documents regarding DFPS hearings at the State Office of Administrative Hearings ("SOAH") concerning Woodside Therapeutic Camp and School ("Woodside"), specifically (1) a copy of any SOAH decisions concerning Woodside, (2) any appeals of those decisions, and (3) any other documents pertaining to Woodside's current or future status as a licensed camp for children, including the license itself.<sup>1</sup> DFPS later received a second request, from a different requestor, for similar information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also considered comments submitted by attorneys representing one

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<sup>1</sup>We note that this requestor has clarified a portion of his request, specifically it is noted that he "does not seek any of the underlying investigatory files concerning Woodside Trails." See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted information is not responsive to the present requests, which seek information regarding SOAH decisions pertaining to Woodside and any other documents regarding Woodside's current or future status as a licensed camp. Any information that does not pertain to SOAH decisions or the licensure status of Woodside is thus not responsive to the requests for information. This ruling does not address the public availability of any information that is not responsive to the requests, and DFPS is not required to release that information in response to the requests.

We note that the responsive information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases[.]

Gov't Code § 552.022(a)(12). The responsive information consists of final decisions and orders issued by SOAH. Gov't Code § 552.022(a)(12). Therefore, DFPS may only withhold the responsive information if it is confidential under other law. Although you seek to withhold the responsive information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions). Section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(1). However, section 552.101 of the Government Code excepts from disclosure information considered confidential by law. Therefore, we will address your arguments under section 552.101 of the Government Code for the responsive 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. Section 552.101 encompasses information that other statutes make confidential. Section 40.005 of the Human Resources Code authorizes DFPS to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect, and provides in pertinent part:

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

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

Hum. Res. Code § 40.005. In accordance with section 40.005, DFPS promulgated section 745.8485 of title 40 of the Administrative Code to make child care facility license investigations confidential. Section 745.8485 provides in part:

(c) The following information relating to a completed investigation of child abuse or neglect is confidential and not available to the general public, except as provided under this chapter and applicable federal or state law:

(1) The description of the allegation of child abuse or neglect;

(2) The identity of the person making the allegation; and

(3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation.

40 T.A.C. § 745.8485(c). You contend that pursuant to section 745.8485, the SOAH child care license decision numbers 530-06-0657.R and 530-06-0654.E are confidential. We agree that section 745.8485 explicitly makes certain license investigations and records created by DFPS confidential. However, in this instance, the submitted information consists of final orders and decisions created and issued by SOAH, not license investigations and records created by DFPS. You appear to argue, however, that because the SOAH decisions contain information that relates to DFPS investigations, section 745.8485 should apply to SOAH decisions as well. While we acknowledge the sensitivity of the information involved, we note that this office has determined that to fall within section 552.101, a statute must explicitly require confidentiality; confidentiality will not be inferred. *See* Open Records Decision Nos. 465 (1987), 658 (1998), 478(1987). By its terms, section 745.8485 only applies to the investigation records of DFPS. Since the decisions at issue are not the investigation records of DFPS, they are not confidential under section 745.8485. Accordingly, we find that DFPS may not withhold the decisions at issue pursuant to section 552.101 of the Government Code in conjunction with section 745.8485 of the Administrative Code.

You also seek to withhold Decision Nos. 530-06-0657.R and 530-06-0654.E under section 261.401 of the Family Code. Section 261.401 of the Family Code provides in relevant part:

(b) a state agency that operates, licenses, certifies, or registers a facility in which children are located shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility.

Fam. Code § 261.401(b). Upon review of the information at issue, we find that you have failed to demonstrate how Decision Nos. 530-06-0657.R and 530-06-0654.E are confidential under section 261.401 of the Family Code. Thus, no portion of the information at issue may be withheld on this basis.

In summary, DFPS has failed to demonstrate a basis upon which these reports may be withheld. Accordingly, the reports must be released to the requestor.

DFPS requests a previous determination that information developed in investigations of alleged or suspected child abuse or neglect at a residential child care facility be exempt from public disclosure under the Act. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; and must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 264392

Enc. Submitted documents

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