



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2011

Ms. Rosa L. Rohr  
Litigation Counsel  
Texas Department of Family and Protective Services  
P.O. Box 149030, MC E-611  
Austin, Texas 78714-9030

OR2011-00241

Dear Ms. Rohr:

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# 405069 (DFPS internal tracking # 2010-0374).

The Texas Department of Family and Protective Services (the "department") received a request for information relating to the investigation, contract, and compliance of Shoreline, Inc. ("Shoreline") and for information relating to the investigation, personnel files, and background checks of two named individuals. You state the department will release information pertaining to the dates of compliance checks, the number of children placed in the Shoreline facility and the Shoreline contract. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim.

We must address the department's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures the department must follow in asking this officer to decide whether information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which

exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1), (2). As of this date, you have not submitted a copy or representative samples of the information responsive to the request. Consequently, the department failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). You assert the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure and may be waived. *See Gov't Code § 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with the requirements of section 552.301, you have waived your claim under section 552.103. Accordingly, the department may not withhold the requested information under section 552.103 of the Government Code.

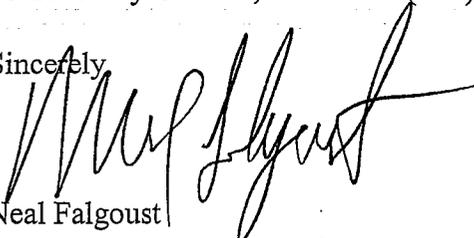
The department also raises section 552.101 of the Government Code, which is a mandatory exception to disclosure. However, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information confidential by law. Therefore, we must order the department to release the information at issue pursuant to section 552.302. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government 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 [http://www.oag.state.tx.us/open/index\\_or1.php](http://www.oag.state.tx.us/open/index_or1.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust", written over the word "Sincerely,".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 405069

No submitted documents

c: Requestor