



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2013

Mr. Jonathan Miles
Open Government Attorney
Texas Department of Family and Protective Services
Department Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2013-21034

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# 507489 (DFPS ORR Request No. 091620137BQ).

The Texas Department of Family and Protective Services (the "department") received a request for all records pertaining to a named facility for a specified time period and the case report and investigation pertaining to a specified incident. You state you will release some of the requested information with redactions made pursuant to sections 552.130 and 552.147 of the Government Code.¹ 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

confidential. Section 40.005 of the Human Resources Code authorizes the department 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.

(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 the confidentiality of department investigation and facility monitoring records are found at chapter 745 of title 40 of the Texas Administrative Code. The department promulgated section 745.8485 of title 40 of the Administrative Code to make certain child care facility license investigations and records confidential. Section 745.8485 provides in relevant part:

(a) All investigations are confidential until [the department] complete[s] the investigation and make[s] a finding.

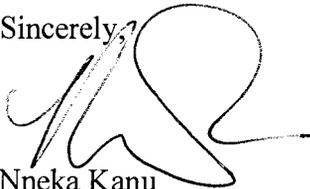
40 T.A.C. § 745.8485(a). You represent to this office that the submitted information consists of files, reports, records, or working papers concerning an investigation that was ongoing on the date of the request so as to be confidential under section 745.8485(a). Based on your representations and our review, we find the information at issue falls within the scope of section 745.8485(a). Therefore, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code.

You also ask this office to issue a previous determination that would permit the department to withhold information subject to section 745.8485 of title 40 of the Texas Administrative Code. We decline to issue such 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; therefore, this ruling 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 more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over a light blue horizontal line.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/akg

Ref: ID# 507489

Enc. Submitted documents

c: Requestor
(w/o enclosures)