



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2014

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

OR2014-00225

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# 508319 (DFPS ORR No. 09232013R1Q).

The Texas Department of Family and Protective Services (the "department") received a request for all documents pertaining to a specified incident. You state the department has released some of the requested information with the redaction of social security numbers made under section 552.147 of the Government Code.<sup>1</sup> 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 representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 40.005 of the Human Resources Code authorizes the department to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect 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). In accordance with section 40.005, the department promulgated section 745.8485 of title 40 of the Texas 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)(1)–(3). You represent to this office the information at issue, which you have marked, is related to investigations of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under section 745.8485(c).<sup>3</sup> You also state the information at issue is not subject to disclosure under the provisions of chapter 745 of title 40 of the Texas Administrative Code that govern information that must be maintained in the department's monitoring files. *See id.* §§ 745.8481 (information in monitoring file is for most part available to general public), .8487 (department may release to public only those portions of abuse or neglect investigation record that must be filed in monitoring file), .8489

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<sup>3</sup>Although you have marked the information at issue under section 745.8487, we understand you to raise section 745.8485 based on your submitted arguments.

(except for certain specified information, department will maintain all records of abuse or neglect investigation separate from monitoring file). Based on your representations and our review, we find the department must withhold the information at issue, which you have marked under section 552.101 of the Government Code in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code.<sup>4</sup>

In accordance with section 40.005 of the Human Resources Code, the department also promulgated section 745.8493 of title 40 of the Administrative Code. Section 745.8493 provides in part:

(a) [The department] may not release the following portions of an abuse or neglect investigation file to anyone:

(1) The audio taped or videotaped interview of a child, as well as any photographs taken of a child. An authorized person may review them but may not have copies;

...

(3) The name of the person who made the report or any information identifying this person;

...

(6) The identity of any child or information identifying the child, unless the requestor is:

(A) The child's parent or prospective adoptive parent [or]

(B) The operation that was cited for a deficiency as a result of the investigation[.]

...

(b) Notwithstanding any other provision in this section, [the department] may provide any of the above confidential information to the following parties in the relevant situations:

(1) [The department's] staff, including volunteers, as necessary to perform their assigned duties;

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<sup>4</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

- (2) Law enforcement for the purpose of investigating allegations of child abuse or neglect or false or malicious reporting of alleged child abuse or neglect;
- (3) A member of the state legislature when necessary to carry out that member's official duties; and
- (4) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction.

*Id.* § 745.8493(a)(1), (3), (6)(A)-(B), (b). You state the remaining information was used or developed in an investigation of alleged child abuse or neglect. You inform our office that as the attorney representing the child who was the victim of the abuse or neglect at issue, the requestor has a right of access to some of the submitted information. Section 745.8491 of title 40 of the Texas Administrative Code enumerates the parties that may access confidential information pertaining to licensed facilities. *Id.* § 745.8491 (attorney of alleged victim of child abuse or neglect has authority to obtain confidential information relating to abuse or neglect investigation). Thus, pursuant to section 745.8491, the department will release some of the submitted information to the requestor. However, you argue section 745.8493 of title 40 of the Texas Administrative Code prohibits the release of some of the remaining information to anyone, including the requestor. Section 745.8493(a) enumerates certain categories of information, including audio taped interviews of a child, the name of the person who made the report of alleged abuse or neglect, and the identifying information of any child, that may not be released to anyone, except the parties listed in section 745.8493(b). Furthermore, pursuant to section 745.8493(a)(6)(A)-(B), the identifying information of a child in an abuse or neglect investigation file may be released to the child's parent, prospective adoptive parent, or the operation that was cited for a deficiency as a result of the investigation. Accordingly, section 745.8493 specifically controls the release of the information enumerated in this section, not section 745.8491. Upon review, we find the requestor is not one of the parties to whom the department may release information under section 745.8493(b) or 745.8493(a)(6)(A)-(B). Accordingly, based on your representations and our review, we conclude the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 745.8493(a) of title 40 of the Texas Administrative Code. However, we note the remaining information you seek to withhold under section 745.8493(a) of title 40 of the Texas Administrative Code is not confidential. Therefore, the remaining information you seek to withhold may not be withheld under section 552.101 of the Government Code on this basis.

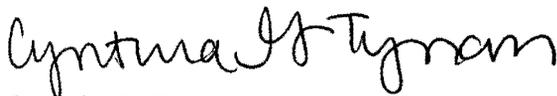
In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with

section 745.8493(a) of title 40 of the Texas Administrative Code. The department must release the remaining information to this requestor.<sup>5</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 508319

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note the information to be released contains information to which the requestor has a right of access. Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.