



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2014

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

OR2014-01429

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# 511748 (DFPS Ref. Nos. 10232013PZD/11042013OXX).

The Texas Department of Family Protective Services (the "department") received a request for information pertaining to assistance payments received by a named individual and the Child Protective Services ("CPS") and Lutheran Social Services home studies conducted on the named individual. The department received a second request from a separate requestor for the same specified CPS home study. You inform us you have released some information to the first requestor. You also inform us you will withhold certain information pursuant to the previous determination issued to the department in Open Records Letter No. 2003-5590 (2003).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.

¹Open Records Letter No. 2003-5590 is a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, the records concerning an investigation of an allegation of abuse or neglect of a child and the records used or developed in providing services as a result of such an investigation, unless the department's rules permit the department to release requested records to a particular requestor.

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 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.

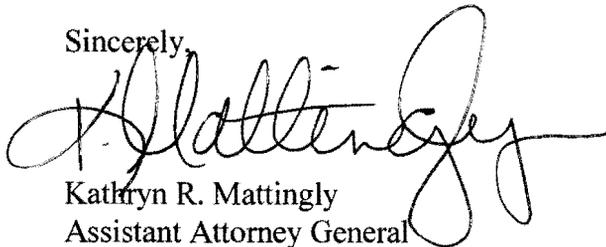
40 T.A.C. § 745.8485(a). You represent to this office the submitted information consists of files, reports, records, or working papers concerning an ongoing investigation of alleged child abuse or neglect at a licensed child care facility so as to be confidential under section 745.8485(a). You also inform us the information at issue is not 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 (except for certain specified information, department will maintain all records of abuse or neglect investigation separate from monitoring file). You also note neither of the requestors is one of the enumerated persons eligible to receive copies of the information at issue under section 745.8491 of title 40. *See id.* § 745.8491. Based on your representations and our review, we find 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.²

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 511748

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.