



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2014

Mr. Thomas H. Walston  
General Counsel  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

OR2014-04750

Dear Mr. Walston:

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# 515908.

The State Office of Administrative Hearings ("SOAH") received a request for all case records relating to a specified case. You state SOAH will release some of the requested information. 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 confidential. Section 40.005 of the Human Resources Code authorizes the Texas Department of Family and Protective Services (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.

...

(d) Except as otherwise provided, a person who is authorized to receive confidential information shall maintain its confidentiality and shall prevent disclosure of the information to a person who is not authorized to receive the information.

Hum. Res. Code § 40.005(a), (b), (d). 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). The submitted information consists of a notice of hearing filed by the department with SOAH, a “Decision and Order” issued by SOAH, and an audio recording of a SOAH hearing on the merits. You contend the submitted information relates to a completed investigation of child abuse at a licensed child care facility. You state the submitted records contain a description of the alleged abuse, “along with summaries of information contained in the files, reports, records, and communications used or developed during the [department’s] investigation of this matter.” You assert these descriptions and summaries of abuse are confidential under section 745.8485(c). You inform us that an entity, like SOAH, that is authorized to receive confidential information from the department is required to maintain the confidentiality of such records and prevent disclosure to any unauthorized person. *See* Hum. Res. Code § 40.005(d).

We note that the requestor in this instance is the attorney for the victim. Pursuant to section 745.8491 of title 40 of the Texas Administrative Code, the attorney of an alleged victim of child abuse has the authority to obtain confidential information relating to the abuse investigation. 40 T.A.C. § 745.8491. Thus, assuming, without deciding, the information at issue is confidential under section 745.8485, the requestor has a right of access to the

information at issue under section 745.8491. Accordingly, none of the submitted information may be withheld under section 745.8485 of title 40 of the Texas Administrative Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which applies to investigations of alleged or suspected child abuse or neglect. *See* Fam. Code § 261.201. Although you raise section 261.201(a) for the submitted information, we note the incident at issue occurred at a child care facility that is regulated by the department under chapter 42 of the Human Resources Code. Section 261.201(h) provides section 261.201 “does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.” *Id.* § 261.201(h). Thus, in accordance with section 261.201(h), section 261.201(a) is not applicable to the submitted information and SOAH may not withhold it under section 552.101 on this basis. *See id.* § 261.201(h). As no other exceptions are raised, the submitted information must be released to this requestor.

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/akg

Ref: ID# 515908

Enc. Submitted documents

c: Requestor  
(w/o enclosures)