



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2014

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

OR2014-10262

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# 525873 (DFPS ORR Request No. 031720146DN).

The Texas Department of Family and Protective Services ("department") received a request for information pertaining to a specified case.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.

¹As you have not submitted a copy of the written request for information, we take our description from your brief. We note the department failed to comply with the procedural requirements of section 552.301(b) of the Government Code by failing to meet its 10-business-day and 15-business day deadlines. *See* Gov't Code § 552.301(b) (requiring a governmental body to ask for the attorney general's decision and to state the exceptions that apply within ten business days of receiving the written request), (e) (requiring a governmental body to submit to this office within fifteen business days of receiving an open records request (1) 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). Nonetheless, the applicability of section 552.101 of the Government Code can constitute a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the department's assertion this exception.

We have considered the exception you claim and reviewed the submitted representative sample of information.²

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 Texas Administrative Code to make confidential certain child care facility license investigations and records. Section 745.8485(c) provides as follows:

(c) Completed investigations of child abuse or neglect are confidential and not available to the general public, except as provided under this chapter and applicable federal or state law.

40 T.A.C. § 745.8485(c). You explain the submitted information consists of an investigation of child abuse or neglect at a licensed child care facility, so as to be subject to section 745.8485(c). We understand the investigation is completed. You inform our office that as the legal representative of the parent of 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 who

²We 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.

may obtain confidential information pertaining to an investigation of licensed facilities. *Id.* § 745.8491. Section 745.8491(a)(2) reads in pertinent part as follows:

(a) The following may obtain information from the confidential portions of an abuse or neglect investigation file, subject to the limitations described in § 745.8493 of this title . . . and § 745.8495 of this title . . . :

...

(2) The parent of the child who is the subject of the investigation . . . [.]

Id. § 745.8491(a)(2). Thus, pursuant to section 745.8491(a)(2), the department acknowledges the requestor has a right of access to some of the submitted information.

However, you argue section 745.8493(a)(2) of title 40 of the Texas Administrative Code prohibits the release to anyone, including the requestor, of information that identifies the person who made a report that resulted in an investigation. *Id.* § 745.8493(a)(2). Section 745.8493(a)(2) states:

(a) [The department] may not release the following portions of Licensing records to anyone:

...

(2) Any information identifying the person who made a report that resulted in an investigation[.]

Id. § 745.8493(a)(2). Under section 745.8493(b), the department may provide the information made confidential under section 745.8493(a) to certain parties in relevant situations. *Id.* § 745.8493(b). Upon review, we find the requestor is not one of the parties to whom the department may release the information made confidential under section 745.8493(a). However, in this case, the reporting party is the requestor's client. To construe section 745.8493(a)(2) to require a governmental body to withhold the identifying information of a reporting party from the authorized representative of the reporting party would lead to an absurd result that the department could not have intended. *See Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (stating unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011) (noting courts avoid construing statutes in ways that lead to foolish result). Therefore, the department may not withhold the identity of the reporting party who is the requestor's client under section 552.101 in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code.

We note the submitted information includes the identities of children who are not the requestor's client's children. Section 745.8493(a)(7) prohibits the department from releasing to anyone "[t]he identity of any child or information identifying the child in an abuse or neglect investigation, unless the requestor is" one of three specified parties. *Id.* § 745.8493(a)(7). With respect to the children who are not the requestor's client's children, we find the requestor is not one of the specified parties entitled to the information subject to section 745.8493(a)(7). After review of the submitted information, we conclude the department must withhold the information that identifies the children who are not the requestor's client's children under section 552.101 of the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code. We have marked the information accordingly.

You assert some of the remaining information, which you have indicated, consists of audio recordings of children who are not the requestor's client's children. Section 745.8495 of title 40 of the Texas Administrative Code now specifically addresses who may review or obtain a copy of a photograph or an audio or visual recording, depiction, or documentation of a child who is in the licensing records. *Id.* § 745.8495. You state the requestor is not one of the parties to whom the department may release audio recordings of these children or whom the department may allow to review audio recordings of these children. Upon review, we find the department must withhold the audio recording we have indicated under section 552.101 of the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code. However, we note the remaining audio recording is of an adult employee of the licensed child care facility at issue. Accordingly, this audio recording may not be withheld under section 552.101 of the Government Code on this basis.

In summary, the department must withhold the information that identifies the children who are not the requestor's client's children and the audio-taped interview of a child who is not the requestor's client's child under section 552.101 of the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code. The remaining information must be released to this requestor.³

Finally, you ask this office to issue a previous determination permitting the department to withhold information under section 552.101 of the Government Code in conjunction with section 745.8493(a) of title 40 of the Texas Administrative Code, without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (previous determinations). Having considered your request, 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

³Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 525873

Enc. Submitted documents

c: Requestor
(w/o enclosures)