



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2014

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

OR2014-12614

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# 530045 (DFPS Ref. No. 04282014XOB).

The Texas Department of Family and Protective Services (the "department") received a request for the requestor's personnel record and conference notes from specified time periods. You state the department will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹We note 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).

²We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

³We 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.

Initially, we note you have only submitted the requested conference notes. We assume, to the extent any information responsive to the remainder of the request existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 certain child care facility license investigations and records confidential. Section 745.8485 provides in relevant part:

(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 information you have marked consists of information developed during investigations of child abuse or neglect at licensed child care facilities, so as to be confidential under section 745.8485(c). We understand the investigations are completed. 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 (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 information at issue falls within the scope of section 745.8485(c). You also state the requestor is not one of the enumerated persons eligible to receive copies of the information at issue under section 745.8491 of title 40 of the Texas Administrative Code. *Id.* § 745.8491. Therefore, we conclude 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. As you raise no other exceptions to disclosure, the department must release the remaining information.

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 745.8485 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 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 530045

Enc. Submitted documents

c: Requestor
(w/o enclosures)