



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2014

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

OR2014-20878

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# 543206 (DFPS ORR Request No. 110620134S5).

The Texas Department of Family and Protective Services (the "department") received a request for a specified investigation file. 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 representative sample of information.<sup>1</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." 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:

---

<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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 "[a]ll 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 information at issue 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(a) (information in monitoring file is for most part available to general public), .8487(a) (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(a).

However, we note 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 . . . :

...

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

*Id.* § 745.8491(a)(2). In this instance, the requestor states she is the parent of the child who is the subject of the investigation at issue. Therefore, even though section 745.8485(a) makes this information confidential to the general public, this requestor generally has a right of access to it under section 745.8491(a)(2). Accordingly, pursuant to section 745.8491(a)(2), the department may not withhold the information at issue from this

requestor under section 552.101 in conjunction with section 745.8485(a). However, this requestor's general right of access under section 745.8491(a)(2) is limited by section 745.8493.

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 Licensing records to anyone:

...

(8) Any other information confidential under state or federal law.

*Id.* § 745.8493(a)(8). Thus, section 745.8493(a)(8) of title 40 of the Texas Administrative Code prohibits the release of any information made confidential under state or federal law to anyone. *Id.* Accordingly, section 745.8493 specifically controls the release of the information enumerated in this section, not section 745.8491. We note 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). However, the requestor is not one of the parties to whom the department may release the information made confidential under section 745.8493(a). We note the submitted information contains personal e-mail addresses subject to section 552.137 of the Government Code.<sup>2</sup> Because section 552.137 makes information confidential under the Act, we will consider its applicability to the submitted information.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). You do not inform us the owners of the e-mail addresses at issue have affirmatively consented to their release. Accordingly, the e-mail addresses we have marked are made confidential by section 552.137 of the Government Code. Therefore, the department must withhold the e-mail addresses we have marked under section 552.101 of the Government Code in conjunction with section 745.8493(a)(8) of title 40 of the Texas Administrative

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code. As no further exceptions to disclosure are raised, the department must release the remaining information to this requestor.<sup>3</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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 543206

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>Because the requestor has a special right of access to the information being released in this instance, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office. See 40 T.A.C. § 745.8491(a)(2).