



February 3, 2015

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

OR2015-02113

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# 552636 (DFPS ORR Request No. 1106201444W).

The Texas Department of Family and Protective Services (the "department") received a request for licensing information and inspection reports during a specified time period pertaining to a specified foster care provider. You state you will redact information pursuant to section 552.147 of the Government Code, Open Records Decision No. 684 (2009), and the previous determination issued in Open Records Letter No. 2003-5590 (2003).¹ You claim portions of the submitted information are excepted from disclosure under section

¹Section 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 under the Act. Gov't Code § 552.147(b). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Open 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.

552.101 of the Government Code. 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. Section 552.101 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 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.

Hum. Res. Code § 40.005 (a)-(b). Rules governing the confidentiality of department investigation and facility monitoring records are found in chapter 745 of title 40 of the Texas Administrative Code. In accordance with section 40.005, 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(c) provides:

(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 state the information you have marked pertains to investigations of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under section 745.8485(c). We understand the investigations are completed. 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

²We assume that 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.

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 you have marked falls within the scope of section 745.8485(c). You 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 in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code.

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:

...

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

...

(7) The identity of any child or information identifying the child in an abuse or neglect investigation[;] and

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

Id. § 745.8493(a)(2), (7)-(8). You state the information you have marked consists of information identifying individuals who made reports that resulted in investigations of child care facilities or information identifying children in abuse or neglect investigations. Therefore, upon review, we find some of the information at issue falls within the scope of section 745.8493(a). 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). Therefore, to the extent the information we marked pertains to a person who made a report that resulted in an investigation, we conclude the department must withhold this information under section 552.101 of the Government Code in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code. Additionally, the department must withhold the identifying information we marked under section 552.101 of

the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code.³ However, we find the remaining information at issue does not identify an individual who made a report that resulted in an investigation of a child care facility or information identifying children in an abuse or neglect investigation, and it may not be withheld under section 552.101 of the Government Code in conjunction with section 745.8493(a)(2) or section 745.8493(a)(7) of title 40 of the Texas Administrative Code.

As indicated above, 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.* § 745.8493(a)(8). You argue the remaining information contains information subject to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and common-law privacy. As indicated above, 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). Because section 552.101 makes information confidential under the Act, we will consider its applicability to the remaining information. Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Therefore, we conclude the information you have marked and the information we have marked constitutes CHRI made confidential by section 411.083 of the Government Code. Accordingly, the department must withhold the information you have marked and the information 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 Code.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). In Open Records Decision No. 393 (1983), this office concluded generally only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. Open Records Decision No. 393 at 2 (1983); see *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). We note the information you seek to withhold does not identify an individual, or pertains to an individual who has been de-identified. Thus, the information at issue does not implicate the privacy interest of an individual. Accordingly, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 745.8493(a)(8) of title 40 of the Texas Administrative Code.

In summary, the department must withhold the information you have marked under section 552.101 in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code. To the extent the information we marked pertains to a person who made a report that resulted in an investigation, we conclude the department must withhold this information under section 552.101 of the Government Code in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code. The department must withhold the identifying information we marked 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 department must withhold the information you have marked and the information 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 Code. The department must release the remaining information.

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/>

[url_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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/bhf

Ref: ID# 552636

Enc. Submitted documents

c: Requestor
(w/o enclosures)