



February 9, 2015

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

OR2015-02506

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# 552799 (DFPS ORR Request No. 11102014GMG).

The Texas Department of Family and Protective Services (the "department") received a request for specified case files and licensing information, investigations, reports, and personnel records pertaining to a named individual. You state the department does not have personnel records pertaining to the named individual.<sup>1</sup> You state you will redact information pursuant to section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2003-5590 (2003).<sup>2</sup> You claim the requested 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

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>2</sup>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.

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 745.8493 of title 40 of the Texas Administrative Code to make confidential certain child care facility license investigations and records. Section 745.8493(a)(1) provides as follows:

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

(1) Any information that would interfere with an ongoing law enforcement investigation or prosecution[.]

...

(b) Notwithstanding any other provision in this section, [the department] may provide any of the above confidential information to the following parties in the relevant situations:

(1) [The department's] staff, including volunteers, as necessary to perform their assigned duties;

(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect or false or malicious reporting of alleged child abuse or neglect;

(3) A member of the state legislature when necessary to carry out that member's official duties;

(4) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction; and

(5) A social study evaluator who has requested a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code §107.05145.

40 T. A.C. § 745.8493(a)(1), (b). You inform us the release of the submitted information would interfere with an ongoing criminal investigation of a specified law enforcement agency. Therefore, upon review, we find 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, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 745.8493(a) of title 40 of the Texas Administrative Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 552799

Enc. Submitted documents

c: Requestor  
(w/o enclosures)