



February 26, 2015

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

OR2015-03846

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# 555254 (ORR No. 12052014XKM).

The Texas Department of Family and Protective Services (the "department") received a request for information regarding the inspection of a named daycare facility. You claim some of 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 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 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(b) provides as follows:

(b) Completed investigations that do not involve abuse or neglect become part of the operation's monitoring file, which is, for the most part, available to the general public, as provided in § 745.8481 of [title 40].

40 T.A.C. § 745.8485(b). You explain the submitted information consists of a completed investigation of a licensed child care facility that did not involve a determination that child abuse or neglect occurred, so as to be subject to section 745.8485(b). Thus, the submitted information is part of the facility's monitoring file subject to section 745.8481 of title 40 of the Texas Administrative Code. Section 745.8481 provides that information in a facility's monitoring file "is, for the most part, available to the general public[.]" *See id.* § 745.8481(a). However, this section further provides that the department "will not release some information in [the] monitoring file because of other state and federal laws that make information confidential, as provided in § 745.8493 of [title 40 of the Texas Administrative Code][.]" *See id.* § 745.8481(b).

You argue section 745.8493(a)(2) of title 40 of the Texas Administrative Code prohibits the release 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). You state the requestor is not one of the parties to whom the

department may release the information made confidential under section 745.8493(a). However, we note some of the information you have marked under section 745.8493(a)(2) does not identify the reporting party. Accordingly, we find the department may not withhold this information, which we have marked for release, under section 552.101 of the Government Code in conjunction with section 745.8493(a)(2). With the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code.

Section 745.8493(a)(8) prohibits the department from releasing “any other information confidential under state or federal law.” *Id.* § 745.8493(a)(8). Section 42.004 of the Human Resources Code provides that “[a] photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by the department in the course of an inspection or investigation authorized by [chapter 42] or Section 261.401, Family Code, is confidential, is not subject to release under [the Act], and may be released only as required by state or federal law or rules adopted by the executive commissioner.” Hum. Res. Code § 42.004. Section 745.8495(a) provides that the department “may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records” to five categories of individuals. *See* 40 T.A.C. § 745.8495(a). Additionally, section 745.8495(b) provides that the department may allow four categories of individuals to “review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records,” but those individuals “may not have a copy.” *See id.* § 745.8495(b). We understand the investigation at issue was authorized by chapter 42 of the Human Resources Code. You state the requestor is not one of the parties to whom the department may release the information at issue under section 745.8495 of title 40 of the Texas Administrative Code. Accordingly, we find the department must withhold the identifying information of children in the submitted information, which you have marked, under section 552.101 of the Government Code in conjunction with section 42.004 of the Human Resources Code.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked 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 of children in the submitted information, which you have marked, under section 552.101 of the Government Code in conjunction with section 42.004 of the Human Resources 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/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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 555254

Enc. Submitted documents

c: Requestor
(w/o enclosures)