



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 26, 2015

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

OR2015-12795

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# 568871 (DFPS Ref. No. 04082015SNT).

The Texas Department of Family and Protective Services (the "department") received a request for licensing information and incident reports during a specified time period for a specified child care facility.¹ You state the department will redact social security numbers pursuant to section 552.147(b) of the Government Code.² You claim portions of the submitted information are excepted from disclosure under section 552.101 of the

¹We note the requestor narrowed the scope of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify or narrow the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we note you have not submitted information responsive to the portion of the request seeking licensing information. To the extent information responsive to this portion of the request existed and was maintained by the department on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .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 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). In accordance with section 40.005, the department promulgated section 745.8485 of title 40 of the Texas Administrative Code to make child care facility license investigations confidential. Section 745.8485(c) provides as follows:

(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 is related to investigations of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under section 745.8485(c). You indicate the investigations are completed. You

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.

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 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.

You seek to withhold portions of the remaining information, which consist of completed investigations, under section 552.101 of the Government Code in conjunction with section 745.8493(a), which is also encompassed by section 552.101 of the Government Code and states, in relevant part, the following:

(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; [and]

...

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

Id. § 745.8493(a)(2), (7). 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.

The remaining information includes the identities of children involved in a child abuse or neglect investigation. Section 745.8493(a)(7) prohibits the department from releasing this

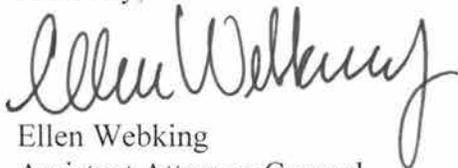
information. *Id.* § 745.8493(a)(7). However, section 745.8493(a)(7) allows the department to release such information to certain parties. *Id.* We find the requestor is not one of the specified parties entitled to the information subject to section 745.8493(a)(7). Additionally, the requestor is not one of the parties listed in section 745.8493(b) to whom the department may release the information made confidential under section 745.8493(a). *See id.* § 745.8493(b). After review of the remaining information, we conclude the department must withhold the information that identifies the children in the remaining investigation reports, which we have 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.⁴

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. 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 remaining investigation reports, which we have 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 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 568871

Enc. Submitted documents

c: Requestor
(w/o enclosures)