



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 21, 2015

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

OR2015-14854

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# 572194 (DFPS# 04272015PCB).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a specified child care center during a specified time period, including specified information regarding a specified incident.<sup>1</sup> The department states it will redact information pursuant to sections 552.130, 552.136, and 552.147 of the Government Code and under section 552.137 of the Government Code in accordance with

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<sup>1</sup>The department states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify 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 overbroad 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).

Open Records Decision No. 684 (2009).<sup>2</sup> The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.<sup>3</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. Section 552.101 encompasses section 40.005 of the Human Resources Code. Section 40.005 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 chapter 745 of title 40 of the Texas Administrative Code to make confidential certain information in department inspections and investigations. Section 745.8493(a) of title 40 of the Texas Administrative Code which states, in relevant part:

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<sup>2</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>3</sup>We 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.

(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, unless the requestor is:

(A) The child's parent or prospective adoptive parent[.]

40 T.A.C. § 745.8493(a)(2), (a)(7)(A). The department states some of the submitted information was used or developed in an investigation of alleged child abuse or neglect that was closed on the date of the present request. 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). The requestor is not one of the parties to whom the department may release the information made confidential under section 745.8493(a)(2). Therefore, the department must withhold the identity of the reporting party, which it has 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 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, to anyone except certain parties. *Id.* § 745.8493(a)(7). We note the requestor is an attorney for the mother of one of the children at issue. Thus, we find this requestor has a right of access to his client's child's information pursuant to section 745.8493(a)(7)(A), but not to the identifying information of the other children involved in the investigation. *See id.* § 745.8493(a)(7)(A). We note the department marked some of the identifying information of the requestor's client's child and information that does not consist of identifying information of a child involved in a child abuse or neglect investigation. Thus, the department may not withhold this information, which we have marked for release, under section 552.101 in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code. However, the remaining information the department marked consists of the identifying information of children involved in a child abuse or neglect investigation, to which the requestor does not have a right of access under section 745.8493(a)(7)(A). Accordingly, with the exception of the information we have marked for release, the department must withhold the information it has 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.

Section 745.8495(a) of title 40 of the Texas Administrative Code 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. 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). The department states the requestor is not one of the parties to whom the department may release the information at issue under section 745.8495. Accordingly, we find the department must withhold the submitted audio recordings and the remaining information it has marked under section 552.101 of the Government Code in conjunction with section 745.8495 of title 40 of the Texas Administrative Code.

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). Upon review, we find the submitted information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor has a special right of access to his client’s child’s information that would ordinarily be withheld to protect his client’s child’s privacy interests. *See* Gov’t Code § 552.023(a)-(b) (governmental body may not deny access to person or person’s representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department may not withhold the requestor’s client’s child’s information under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the department must withhold the identity of the reporting party, which it has 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. With the exception of the information we have marked for release, the department must withhold the information it has 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 submitted audio recordings and the remaining information it has marked under

section 552.101 of the Government Code in conjunction with section 745.8495 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 572194

Enc. Submitted documents

c: Requestor  
(w/o enclosures)