



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2015

Mr. Jonathan Miles
Open Government Attorney
Texas Department of Family and Protective Services
Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2015-23250

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# 586133 (DFPS Ref. No. 08072015GTU).

The Texas Department of Family and Protective Services (the "department") received a request for licensing information and incident reports pertaining to a specified child care facility.¹ You state the department will redact motor vehicle record information under section 552.130(c) of the Government Code, access device numbers pursuant to section 552.136 of the Government Code, e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009), and social security

¹We note you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor accepted the cost estimate on August 14, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

numbers under section 552.147(b) of the Government Code.² You claim 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 representative sample of information.³

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as chapter 411 of the Government Code. Chapter 411 makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 (Vernon) (to be codified as an amendment to Gov’t Code § 411.083(a)). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 21, 2015 Tex. Sess. Law Serv. 4327, 4337 (Vernon) (to be codified as an amendment to Gov’t Code § 411.083(a)). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). 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. 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* Gov’t Code § 552.147(b).

³We 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 that those records contain substantially different types of information than that submitted to this office.

as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information you have marked consists of CHRI the department must withhold under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also 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 relevant part:

(a) The executive commissioner [of the Texas Health and Human Services Commission] shall establish and the department shall enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

(b) The executive commissioner 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.

Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 4.187, 2015 Tex. Sess. Law Serv. 1, 773 (Vernon) (to be codified as amendments to 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 an investigation of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under section 745.8485(c). You state the investigation is 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 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.⁴

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[.]

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). Upon review, we find the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 in conjunction with section 745.8493(a)(2) 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. *Id.* § 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). You state 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 identifying information of children in the remaining photographs and recordings under section 552.101 of the Government Code in conjunction with section 745.8495 of title 40 of the Texas Administrative Code.

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

In summary, the department must withhold the information you have marked under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code. The department must withhold the information you have marked, and the additional information we have marked, under section 552.101 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 photographs and recordings 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, 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 586133

Enc. Submitted documents

c: Requestor
(w/o enclosures)