



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 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

OR2015-25506

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# 589595 (DFPS ORR No. 09242015UPQ).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to the requestor's client during a specified time period. 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.<sup>1</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. 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:

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<sup>1</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 that those records contain substantially different types of information than that submitted to this office.

(a) The executive commissioner [of the department] 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 [of 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(a) provides "all investigations are confidential until [the department] complete[s] the investigation and make[s] a finding." 40 T.A.C. § 745.8485(a). You explain the submitted information consists of files, reports, records, or working papers concerning investigations of alleged child abuse or neglect at a licensed child care facility that were ongoing at the time the department received the request, and is confidential under section 745.8485(a). We understand the submitted information 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 submitted information falls within the scope of section 745.8485(a). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 745.8485(a) of title 40 of the Texas Administrative Code.<sup>2</sup>

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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 589595

Enc. Submitted documents

c: Requestor  
(w/o enclosures)