



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2016

Ms. Susan E. Tennyson
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2016-13420

Dear Ms. Tennyson:

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# 613926 (DFPS ORR No. 03292016RDD).

The Texas Department of Family and Protective Services (the "department") received a request for five categories of information pertaining to a specified facility, to include the file pertaining to a specified incident occurring at the facility. The department states it has released some information to the requestor. The department states it will redact motor vehicle record information under section 552.130(c) of the Government Code, access device numbers under section 552.136(c) of the Government Code, and social security numbers under section 552.147(b) of the Government Code.¹ The department further states it will redact information pursuant to section 552.137 of the Government Code in accordance with

¹Section 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 permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *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. *Id.* § 552.147(b).

Open Records Decision No. 684 (2009).² The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.³ We have considered the exception the department claims and reviewed the submitted information.

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:

(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). The department explains the submitted information concerns an open investigation of alleged child abuse or neglect at a licensed child care facility, and is confidential under section 745.8485(a). The department states 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

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

³We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

monitoring file). Based on these 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 40.005(a)-(b) of the Human Resources Code and section 745.8485(a) of title 40 of the Texas Administrative Code.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 613926

Enc. Submitted documents

c: Requestor
(w/o enclosures)