



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2006

Ms. Sheila Bailey Taylor
Chief Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

OR2006-13883

Dear Ms. Taylor:

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# 264229.

The State Office of Administrative Hearings ("SOAH") received two requests for all decisions rendered by SOAH pertaining to Woodside Hills Therapeutic Camp. You claim that 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 information.

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 information that other statutes make confidential. Section 40.005 authorizes the Texas Department of Family and Protective Services ("DFPS") to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect, and provides in pertinent part:

- (a) [DFPS] shall establish and enforce rules governing the custody, use, and preservation of [DFPS] records, papers, files, and communications.

(b) [DFPS] shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a [DFPS] service or to an investigation the [DFPS] conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of [DFPS] programs and must comply with applicable state and federal law and [DFPS] rules.

Hum. Res. Code § 40.005. In accordance with section 40.005, DFPS promulgated section 745.8485 of title 40 of the Administrative Code to make child care facility license investigations confidential. Section 745.8485 provides in part:

(c) The following information relating to a completed investigation of child abuse or neglect is confidential and not available to the general public, except as provided under this chapter and applicable federal or state law:

- (1) The description of the allegation of child abuse or neglect;
- (2) The identity of the person making the allegation; and
- (3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation.

40 T.A.C. § 745.8485(c). You contend that pursuant to section 745.8485, the SOAH child care license decision numbers 530-06-0654.E, 530-06-0655.E, 530-06-0656.R, and 530-06-0657.R are confidential. We agree that section 745.8485 explicitly makes certain license investigations and records created by DFPS confidential. However, in this instance, the submitted information consists of final orders and decisions created and issued by SOAH, not license investigations and records created by DFPS. You appear to argue, however, that because the SOAH decisions contain information that relates to DFPS investigations, section 745.8485 should apply to SOAH decisions as well. While we acknowledge the sensitivity of the information involved, we note that this office has determined that to fall within section 552.101, a statute must explicitly require confidentiality; confidentiality will not be inferred. *See* Open Records Decision Nos. 465 (1987), 658(1998), 478(1987). By its terms, section 745.8485 only applies to the investigation records of DFPS. Since the decisions at issue are not the investigation records of DFPS, they are not confidential under section 745.8485. Furthermore, you have failed to demonstrate that any other statute expressly makes the decisions at issue confidential.

Thus, we find that SOAH may not withhold the decisions at issue pursuant to section 552.101, and the decisions in Docket Nos. 530-06-0654.E, 530-06-0655.E, 530-06-0656.R, and 530-06-0657.R must be released.

Next, you state that the Docket Nos. 530-06-0652.E and 530-06-0653.E should be withheld in keeping with the letter and spirit of DFPS's rules. As stated above, this office will not infer confidentiality where it is not expressly created. *See* Gov't Code § 552.006 (providing that Gov't Code ch. 552 does not authorize withholding of public information except as expressly provided). Thus, we find that you have failed to demonstrate a basis upon which these reports may be withheld, and they must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

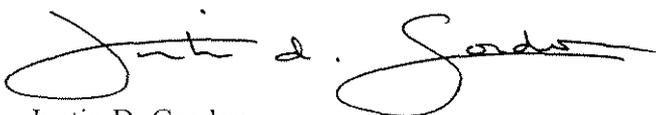
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If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eb

Ref: ID# 264229

Enc. Submitted documents

c: Ms. Liz Austin Peterson
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(w/o enclosures)