



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2007

Ms. Patricia Fernandez  
Open Government Authority  
Texas Department of Family and Protective Services  
P. O. Box 149030  
Austin, Texas 78714

OR2007-14498

Dear Ms. Fernandez:

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 #293802.

The Texas Department of Families and Protective Services (the "department") received thirteen requests from eleven different requestors for the entire record of an abuse and neglect investigation conducted by the department. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You contend that submitted information, which you have marked "Appendix," is confidential pursuant to section 745.8485 of title 40 of the Texas Administrative Code. Chapter 42 of the Human Resources Code governs the licensing and regulation of child-care facilities. Section 42.044 authorizes the department to conduct investigations of facilities it regulates. *See* Hum. Res. Code § 42.044. Section 40.005 authorizes the department to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect at certain child-care facilities, and provides in pertinent part:

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<sup>1</sup>We 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.

(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.

*Id.* § 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 certain child care facility license investigations and records created by the department confidential. *See* 40 T.A.C. § 745.8485. Section 745.8485(c) provides the following:

(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 state that the information the department seeks to withhold under section 745.8485 was used or developed in an investigation of alleged or suspected child abuse or neglect at a child care facility. We agree that this provision makes information confidential to the general public. We note, however, that nine of the requestors are representatives of or attorneys representing the alleged perpetrators of the abuse or neglect that is the subject of the investigation at issue. Section 745.8491 of title 40 of the Texas Administrative Code provides as follows:

The following have the authority to obtain confidential information relating to an abuse or neglect investigation:

...

(4) The alleged perpetrator;

40 T.A.C. § 745.8491(4). Therefore, even though section 745.8485(c) makes information confidential to the general public, these nine requestors have a right of access to the Appendix under section 745.8491(4). Accordingly, pursuant to section 552.101 of the Government Code in conjunction with section 745.8485 of the Texas Administrative Code, the department must only withhold the Appendix from the requestors who do not represent the alleged perpetrators of the alleged abuse or neglect. We now address your argument pertaining to the requestors who do represent the alleged perpetrators of the alleged abuse or neglect.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977).

You have provided us with a representation from the Harris County District Attorney’s Office (the “district attorney”) that the district attorney is currently conducting a criminal investigation regarding this incident, and that it opposes the release of the requested information until its investigation has concluded. *See Open Records Decision No. 474 at 4-5 (1987)* (section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct). However, in this instance, the requestors’ right of access under section 745.8491(4) prevails over the more general exception to disclosure under the Act found in section 552.108 of the Government Code. *See Gov’t Code § 552.022(a)(15)* (information regarded as open to the public under an agency’s policies is public information, unless confidential by law); *see also Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976)* (ruling that general exceptions under the Act yield to a specific right of access provision). Therefore, pursuant to title 40, section 745.8491(4) of the Texas Administrative Code, none of the Appendix may be withheld from the requestors who represent the alleged perpetrators.

In summary, pursuant to section 745.8491(4) of title 40 of the Texas Administrative Code, the department must release the Appendix to those requestors who represent the alleged perpetrators of the investigated abuse or neglect. The department must withhold the Appendix from the remaining three requestors under section 552.101 of the Government Code in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code.

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).

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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 293802

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