



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 28, 2007

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

OR2007-15613

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# 295665.

The Texas Department of Family and Protective Services ("DFPS") received a request for all records of any kind related to Away From Home, Inc. You state that some of the requested information will be released to the requestor. 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 representative sample of information.<sup>1</sup> We have also considered comments submitted to this office by the requestor. Gov't Code § 552.304.

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 of the Human Resources Code authorizes DFPS to adopt rules

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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.

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 state that the information in Appendices A and B was used in investigations of alleged or suspected abuse or neglect at a residential child care facility. Based on these representations and our review of the information at issue, we agree that the information in Appendices A and B is confidential under section 745.8485 of title 40 of the Texas Administrative Code. You also state that DFPS is not authorized to release such information to the requestor. *See id.* § 745.8491. Accordingly, DFPS must withhold this information under section 552.101 of the Government Code.

We now turn to your argument for the information in Appendix C. Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not

be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Upon review, DFPS must withhold Appendix C under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

In summary, DFPS must withhold Appendices A and B under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code. DFPS must also withhold Appendix C under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>2</sup>

You also ask that this office issue a previous determination that would permit DFPS to withhold information developed in investigations of alleged or suspected child abuse or neglect at a licensed facility as described in chapter 42 of the Human Resources Code, except for release to statutorily authorized persons. We decline to issue such a previous determination at this time.

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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

  
Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 295665

Enc. Submitted documents

c: Ms. Jennifer K. Harbury  
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(w/o enclosures)