



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

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

OR2011-00982

Dear Ms. Salluce:

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# 406448 (DFPS Internal Tracking Number 2010-0385).

The Texas Department of Family and Protective Services (the "department") received a request for the following: 1) call records from a specified telephone number assigned to a named employee from September 1, 2010 to October 13, 2010, 2) the named employee's last two evaluations, 3) any memorandum between the named employee and another named individual during a specified time period, and 4) any disciplinary action taken against the named employee during a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to categories two, three, or four of the request for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these aspects of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note a portion of the submitted information was created after the request was received. In addition, we note you have submitted telephone records that are not within the requested September 1, 2010 through October 13, 2010 dates. This information, which we have marked, is not responsive to the instant request for information. This ruling does not

address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

You state that portions of the responsive information are excepted from disclosure pursuant to a previous determination issued by this office to the department in Open Records Letter No. 2003-5590 (2003). That ruling serves as a previous determination under section 552.301(a) of the Government Code and allows the department to withhold records concerning an investigation of alleged abuse or neglect of a child and the records used or developed in providing services as a result of such an investigation under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, unless the department's rules permit the release of the requested records to a particular requestor. You represent portions of the submitted information consist of telephone numbers which are the "result of records or information obtained in the course of abuse or neglect investigations of alleged perpetrators, victims and collateral witnesses." You further state this information is not subject to release pursuant to your rules. *See* 40 TAC §§ 700.201-.207. Therefore, pursuant to Open Records Letter No. 2003-5590, the department must withhold the portions of the submitted information that were obtained in the course an investigation of alleged abuse or neglect of a child or that were used or developed in providing services as a result of such an investigation under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, decision concludes specific, clearly delineated category of information is excepted, and governmental body is explicitly informed it need not seek a decision from this office to withhold information in response to future requests). To the extent the submitted information does not consist of information that was either obtained in the course an investigation of alleged abuse or neglect of a child or used or developed in providing services as a result of such an investigation, the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You state the submitted telephone records may contain telephone numbers protected from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. To the extent the requested information contains the home telephone numbers of the department employee or of her family members, you must withhold this information under section 552.117(a)(1) of the Government Code only if the employee elected to keep this information confidential under section 552.024 of the Government Code prior to the date on

which the request for this information was made. However, if the individual at issue did not make a timely election to keep this information confidential, then the department may not withhold this information under section 552.117(a)(1) of the Government Code.

In summary, to the extent the submitted information consists of information that was obtained in the course of an investigation of alleged abuse or neglect of a child or used or developed in providing services as a result of such an investigation under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, pursuant to Open Records Letter No. 2003-5590. To the extent the requested information contains the home telephone numbers of the named employee or her family members, you must withhold this information under section 552.117(a)(1) of the Government Code only if the employee properly elected to keep this information confidential. The remaining responsive information must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 406448

Enc. Submitted documents

c: Requestor
(w/o enclosures)