



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2011

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

OR2011-16099

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# 435049 (DFPS# 2010-0252).

The Texas Department of Family and Protective Services (the "department") received a request signed by two requestors for (1) all public information, including video, audio, and photographs relating to a specified investigation by the department; and (2) any personnel information regarding the department investigator assigned to the investigation. You state the personnel information regarding the department investigator assigned to the investigation will be released to one of the requestors. 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>

Initially, we note your assertion that one of the requestors is an incarcerated individual, and on that basis, you decline to release information to that individual. In this regard, we note that section 552.028 of the Government Code provides in relevant part:

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<sup>1</sup>We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). On the basis of your representations, we agree that the department need not comply with the request for information from that requestor. We will address your arguments against disclosure under the Act for the remaining requestor.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 40.005 of the Human Resources Code authorizes the department to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect and provides in part:

(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.

Hum. Res. Code § 40.005. In accordance with section 40.005, the department 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 represent to this office that the submitted information is related to an investigation of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under section 745.8485(c)(3). You also state that the submitted information is not subject to disclosure under provisions of chapter 745 of title 40 of the Texas Administrative Code that govern information that must be maintained in the department's monitoring files. *See id.* §§ 745.8481 (information in monitoring file is for most part available to general public), 745.8487 (department may release to public only those portions of abuse or neglect investigation record that must be filed in monitoring file), 745.8489 (except for certain specified information, department will maintain all records of abuse or neglect investigation separate from monitoring file). Based on your representations and our review, we find that the submitted information falls within the scope of section 745.8485(c). In addition, we note that section 745.8491 of title 40 enumerates parties that may access confidential information pertaining to licensed facilities. *See id.* § 745.8491. In this instance, you state, and we agree, that the remaining requestor is not one of the enumerated persons eligible to receive copies of the requested records under section 745.8491 of title 40. We therefore conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code.<sup>2</sup>

You also ask that this office issue a previous determination that would permit the department 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. Accordingly, 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 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.

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

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](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,

A handwritten signature in cursive script that reads "Sean Opperman". The signature is written in black ink and is positioned above the typed name.

Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 435049

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)