



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 15, 2013

Mr. Jonathon Miles  
Open Government Attorney  
Texas Department of Family Protective Services  
P.O. Box 149030, Department Mail Code E611  
Austin, Texas 78714-9030

OR2013-08043

Dear Mr. Miles:

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# 487735 (DFPS Ref. No. 030120139ZB).

The Texas Department of Family and Protective Services (the "department") received a request for all documents regarding Frisco Trails Montessori from the year 2010, through the date of the request. You inform us you have released some of the requested information to the requestor with social security numbers redacted in accordance with section 552.147(b) of the Government Code.<sup>1</sup> We understand you have also redacted driver's license information pursuant to section 552.130(c) of the Government Code<sup>2</sup> and personal e-mail addresses subject to section 552.137 of the Government Code in accordance with

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>2</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsection 552.130(a)(1). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

Open Records Decision No. 684 (2009).<sup>3</sup> You claim some of 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>4</sup>

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). You inform us the department received the request for information on February 28, 2013. Accordingly, the deadline for the department to request a ruling from this office was March 14, 2013. However, the department's request for a ruling from this office was post-marked March 15, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department did not comply with section 552.301(b) in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments under that exception.

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

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<sup>3</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

<sup>4</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

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)(1)-(3). You represent to this office that the information you have marked 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 the information at issue 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 the information at issue 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, we find the 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 the department must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code.<sup>5</sup>

You also ask this office to issue a previous determination that would permit the department to withhold information subject to section 745.8485 of title 40 of the Texas Administrative Code. 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 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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 487735

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.