



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2013

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

OR2013-18456

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# 503246 (ORR Request No. 0717201396T).

The Texas Department of Family and Protective Services (the "department") received a request for licensing inspection reports completed by the department at Little Rascals Learning Center, Inc. during a specified period of time.<sup>1</sup> You state the department will release some of the responsive information to the requestor with certain information redacted as permitted by section 552.147(b) of the Government Code.<sup>2</sup> You claim some 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 information.

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<sup>1</sup>You state the department sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</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).

Initially, you acknowledge, and we agree, the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

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. 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 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. Rules governing the confidentiality of department investigation and facility monitoring records are found at chapter 745 of title 40 of the Texas Administrative Code. The department promulgated section 745.8485 of title 40 of the Administrative Code to make certain child care facility license investigations and records confidential. Section 745.8485 provides in relevant part:

- (a) All investigations are confidential until [the department] complete[s] the investigation and make[s] a finding.

...

(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;
- (3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation[.]

40 T.A.C. § 745.8485(a), (c)(1)-(3). You represent to this office the information you have marked either pertains to open investigations, so as to be confidential under subsection 745.8485(a), or to completed investigations of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under subsection 745.8485(c)(3). You also state the information at issue is not subject to disclosure under the 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), .8487 (department may release to public only those portions of abuse or neglect investigation record that must be filed in monitoring file), .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 subsections 745.8485(a) and 745.8485(c). We note section 745.8491 of title 40 of the Texas Administrative Code enumerates parties that may access confidential information pertaining to licensed facilities. *Id.* § 745.8491. You state the requestor is not one of the enumerated persons eligible to receive copies of the information at issue under section 745.8491 of title 40 of the Texas Administrative Code. Therefore, we conclude the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code.

The department promulgated section 745.8483 of title 40 of the Administrative Code to make the name of an individual who makes a report that results in a child care facility license investigation confidential. *Id.* § 745.8483. The department asserts the information it has marked in the remaining information consists of information identifying individuals who made reports that resulted in investigations of child care operations. Based on your representation and our review, we find some of the information at issue is confidential pursuant to section 745.8483. However, we note, some of the information you have marked, which we have marked for release, does not consist of identifying information. Therefore, the department may not withhold the information we have marked for release under

section 745.8483 of title 40 of the Texas Administrative Code. In addition, we have marked additional identifying information that is confidential in the remaining information. Accordingly, with the exception of the information we have marked for release, 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 745.8483 of title 40 of the Texas Administrative Code.

You state you will redact the motor vehicle record information you have marked pursuant to section 552.130(c) of the Government Code.<sup>3</sup> We note some of the remaining information contains information subject to section 552.130 that you have not marked for redaction.<sup>4</sup> Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Accordingly, the department must withhold the additional motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 745.8485 of title 40 of the Texas Administrative Code. With the exception of the information we have marked for release, 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 745.8483 of title 40 of the Texas Administrative Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>5</sup>

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.texasattorneygeneral.gov/open/>

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<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>We note the requestor has a special right of access to some of the information being released. If the department receives another request for this information from an individual other than this requestor, the department must again seek a decision from this office.

[orl\\_ruling\\_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 503246

Enc. Submitted documents

c: Requestor  
(w/o enclosures)