



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2014

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

OR2014-04101

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# 516186 (DFPS ORR Request No. 12132013SIM).

The Texas Department of Family and Protective Services (the "department") received a request for all inspection documents regarding a specified facility over a specified time period, as well as the licensing application of the specified facility. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you did not submit any information responsive to the request for the licensing application of the specified facility. 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 this aspect of the request exists, we assume the department has released it to the requestor. If the department has not released any such information, it must release it to the requestor at this time. 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).

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 section 40.005 of the Human Resources Code, which 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.

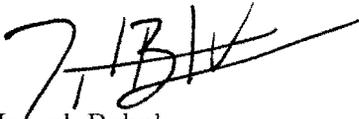
Hum. Res. Code § 40.005. In accordance with section 40.005, the department promulgated section 745.8483 of title 40 of the Texas Administrative Code to make the name of an individual who makes a report that results in a child care facility license investigation confidential. 40 T.A.C. § 745.8483. The department asserts the information it has marked in the submitted information consists of information identifying an individual who made a report that resulted in an investigation of a child care operation. Upon review, we agree the information you have marked is confidential pursuant to section 745.8483. Therefore, the department must withhold the information you 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 also ask this office to issue a previous determination that would permit the department to withhold information subject to section 745.8483 of title 40 of the Texas Administrative Code without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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/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 'J. Behnke', with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/eb

Ref: ID# 516186

Enc. Submitted documents

c: Requestor
(w/o enclosures)