



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 10, 2014

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

OR2014-15993

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# 536925 (ORR# 0624014ALT).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a named child care facility for the previous five years. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.<sup>1</sup>

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 concerning child abuse and neglect and provides in part the following:

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<sup>1</sup>We note the department did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. *Compare id.* § 552.2615(g) ("The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G [of the Act]."), *with id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the department's claim.

(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(a)-(b). In accordance with section 40.005, the department promulgated section 745.8485 of title 40 of the Texas Administrative Code to make child care facility license investigations confidential. Section 745.8485(c) provides, "Completed investigations of child abuse or neglect are confidential and not available to the general public, except as provided under this chapter and applicable federal or state law." 40 T.A.C. § 745.8485(c). You state the information you have marked under section 745.8485 consists of investigations of alleged child abuse or neglect at a licensed child care facility, so as to be confidential under section 745.8485(c). We note the investigations reflect they are completed. Therefore, we find the information at issue falls within the scope of section 745.8485(c). We note 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. *Id.* § 745.8491. Therefore, we conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code.

The department also 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. *Id.* § 745.8483. The department asserts the information it has marked under section 745.8483 consists of identifying information of individuals who made reports that resulted in investigations of child care operations. Upon review, we agree this information 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.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.*

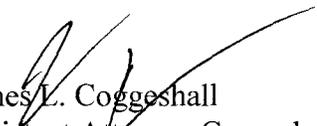
at 683. Additionally, this office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

To conclude, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with sections 745.8483 and 745.8485 of title 40 of the Texas Administrative Code. The department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction common-law privacy. The department must release the remaining information.

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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cz

Ref: ID# 536925

Enc. Submitted documents

c: Requestor  
(w/o enclosures)