



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2014

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

OR2014-22919

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# 547130 (ORR# 09222014YLD).

The Texas Department of Family and Protective Services (the "department") received a request for information regarding investigation number 205644.¹ You state the department will release some of the requested information. 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.²

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

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 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(a)-(b). 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 Texas Administrative Code to address the confidentiality of certain child care facility license investigations and records. Section 745.8485(b) provides, “[c]ompleted investigations that do not involve abuse or neglect become part of the operation’s monitoring file, which is, for the most part, available to the general public, as provided in § 745.8481 of this title[.]” 40 T.A.C. § 745.8485(b); *see also id.* § 745.8481(a) (information in operation’s monitoring file is, for the most part, available to the general public).

Pursuant to section 552.303 of the Government Code, this office asked you, among other things, to provide additional information regarding whether the investigation at issue was completed or incomplete at the time the department received the request for information. *See* Gov’t Code § 552.303 (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). In your response, you inform us the investigation at issue was completed at the time the department received the request for information. You also inform us the submitted information relates to an investigation that did not involve abuse or neglect. Thus, you state the general public may generally obtain information about this investigation pursuant to section 745.8485(b) of title 40 of the Texas Administrative Code. *See also id.* § 745.8481(a) (information in operation’s monitoring file is, for the most part, available to the general public). However, section 745.8481(b) of title 40 of the Texas Administrative Code states, “We will not release some information in an operation’s monitoring file because of other state and federal laws that make the information confidential, as provided in

§ 745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?).” Accordingly, we will address section 745.8493 of title 40 of the Texas Administrative Code, which states, in relevant part, the following:

(a) [The department] may not release the following portions of Licensing records to anyone:

...

(2) Any information identifying the person who made a report that resulted in an investigation;

...

(7) The identity of any child or information identifying the child in an abuse or neglect investigation[; and]

...

(8) Any other information confidential under state or federal law.

Id. § 745.8493(a)(2), (7), (8). Thus, section 745.8493(a)(2) of title 40 of the Texas Administrative Code prohibits release of information that identifies the person who made a report that resulted in an investigation. *Id.* § 745.8493(a)(2). We note under section 745.8493(b), the department may provide the information made confidential under section 745.8493(a) to certain parties in relevant situations. *Id.* § 745.8493(b). The requestor is not one of the parties to whom the department may release information made confidential under section 745.8493(a). Therefore, the department must withhold the identity of the reporting party, which we have marked, within the submitted information under section 552.101 of the Government Code in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code.³

Further, section 745.8493(a)(7) of title 40 of the Texas Administrative Code prohibits release of information identifying any child in an abuse or neglect investigation unless the requestor is one of three specified parties. *Id.* § 745.8493(a)(7). As noted above, the requestor is not one of the parties to whom the department may release information made confidential under section 745.8493(a). *Id.* § 745.8493(b). Therefore, the department must withhold the information identifying the children in the submitted information, which we have marked,

³As our ruling is dispositive for this information, we need not address your argument under section 552.101 of the Government Code in conjunction with section 745.8483 of title 40 of the Texas Administrative Code against its disclosure.

under section 552.101 of the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code.⁴

We also note section 745.8493(a)(8) of title 40 of the Texas Administrative Code prohibits the release of any information made confidential under state or federal law to anyone. *Id.* § 745.8493(a)(8). Accordingly, section 745.8493 specifically controls the release of the information enumerated in this section. As noted above, the requestor is not one of the parties to whom the department may release information made confidential under section 745.8493(a). *Id.* § 745.8493(b). Accordingly, we will address your argument under section 552.101 of the Government Code in conjunction with common-law privacy for the remaining information you marked.

Section 552.101 of the Government Code 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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we agree some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, the information you seek to withhold on this basis relates to individuals who have been de-identified and whose privacy interests are thus protected. Thus, the information at issue is not confidential pursuant to common-law privacy and the department may not withhold the information under section 552.101 of the Government Code in conjunction with section 745.8493(a)(8) of title 40 of the Texas Administrative Code.

In summary, the department must withhold the identity of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code. The department must withhold the identifying information of the children in the submitted information under section 552.101 of the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code. The department must release the remaining information.

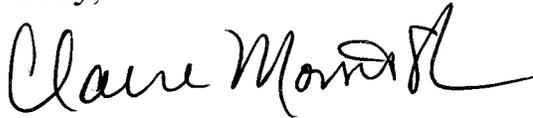
You also ask this office to issue a previous determination that would permit the department to withhold information subject to section 745.8483 of title 40 of the Texas Administrative

⁴As our ruling is dispositive for this information, we need not address your remaining argument under section 552.101 of the Government Code in conjunction with section 745.8495 of title 40 of the Texas Administrative Code against its disclosure.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 547130

Enc. Submitted documents

c: Requestor
(w/o enclosures)