



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2019

Ms. Susan E. Tennyson
Open Government Attorney
Texas Department of Family and Protective Services
Department Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2019-05962

Dear Ms. Tennyson:

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# 752976 (DFPS Reference No. R000169-121018).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to a specified investigation. You state the department will release some information to the requestor. You state the department does not possess information responsive to part of the request.¹ You claim 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.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code exempts 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 executive commissioner [of the department] shall establish and the department shall enforce rules governing the custody, use, and preservation of the department’s records, papers, files, and communications.

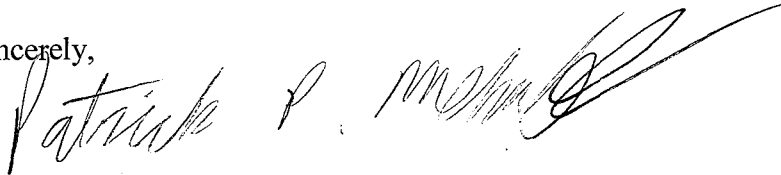
(b) The executive commissioner [of the department] shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent 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 make confidential certain child care facility license investigations and records. Section 745.8485(a) provides “all investigations are confidential until [the department] complete[s] the investigation and make[s] a finding.” 40 T.A.C. § 745.8485(a). You state the submitted information consists of information developed in an investigation of alleged child abuse or neglect at a licensed child care facility that was ongoing at the time the department received the request, and you thus assert the submitted information is confidential under section 745.8485(a). You state the information at issue is not information that must be maintained in the department’s monitoring files. *See id.* §§ 745.8481(a) (information in monitoring file is for most part available to general public), .8487(a) (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 of the submitted information, we find the submitted information falls within the scope of section 745.8485(a). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 40.005(a)-(b) of the Human Resources Code and section 745.8485(a) of title 40 of the Texas Administrative Code.

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 "Patrick P. Mehaffy". The signature is written in a cursive style with a large, sweeping flourish at the end.

Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/gw

Ref: ID# 752976

Enc. Submitted documents

c: Requestor
(w/o enclosures)