



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2019

Mr. Brett Norbraten
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-30689

Dear Mr. Norbraten:

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# 794202 (ORR# OR-20190814-19434).

The Texas Health and Human Services Commission (the "commission") received a request for information related to a specified licensed child facility during a specified time period. The commission claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the commission claims and reviewed the submitted representative sample of information.¹

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 commission 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.

¹ We 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.

(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 commission investigation and facility monitoring records are found at chapter 745 of title 40 of the Texas Administrative Code. The commission 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 provides as follows:

(b) Completed 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). The commission indicates the submitted information consists of investigations of a licensed child care facility, so as to be subject to section 745.8485. We understand the investigations at issue were authorized by chapter 42 of the Human Resources Code. Upon review, we find the submitted information consists of investigations that do not involve abuse or neglect of a child. We understand each of the investigations is completed. *See id.* § 745.8485(a) (all investigations are confidential until completed and finding has been made). Thus, we understand the submitted documents consist of information maintained in the monitoring file for the licensed child care facility under Section 745.8491 of title 40 of the Texas Administrative Code. *See id.* § 745.8485(b) (completed investigations that do not involve abuse or neglect become part of monitoring file). Accordingly, pursuant to section 745.8481 of title 40 of the Texas Administrative Code, the submitted information is generally available to the public. *See id.* § 745.8481 (information in operation's monitoring file is, for the most part, available to general public).

However, section 745.8493(a) states, in relevant part:

(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]

...

(9) Any other information confidential under state or federal law[.]

Id. § 745.8493(a)(2), (7), (9). Thus, section 745.8493(a) prohibits, in relevant part, the release of the identities of the reporting party and of children involved in the investigation. *Id.* §§ 745.8493(a)(2), (7). Section 745.8493(a)(7) lists parties who may obtain certain confidential information related to an investigation contained in the monitoring file of a licensed facility. *Id.* §§ 745.8493(a)(7). The commission informs us the requestor does not fall within any of the categories of individuals or entities who may obtain the confidential portions of the information. Upon review, we find most of the information the commission marked, and the additional information we marked, consists of the identifying information of children and their families that is protected by section 745.8493(a)(7) of title 40 of the Texas Administrative Code. However, some of the information the commission marked, which we marked for release, does not identify an individual for purposes of this section, and may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, with the exception of the information we marked for release, the commission must withhold the information it marked and we marked 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 commission must also withhold the identities of the reporting parties under section 552.101 in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code.

Section 745.8493(a)(9) prohibits the commission from releasing “any other information confidential under state or federal law.” *Id.* § 745.8493(a)(9). Section 42.004 of the Human Resources Code provides that “[a] photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by the commission in the course of an inspection or investigation authorized by [chapter 42] or Section 261.401, Family Code, is confidential, is not subject to release under [the Act], and may be released only as required by state or federal law or rules adopted by the executive commissioner.” Hum. Res. Code § 42.004. Section 745.8495(a) provides that the commission “may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records” to five categories of individuals. *See* 40 T.A.C. § 745.8495(a). Upon review, we find the commission has not demonstrated any of the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 42.004 of the Human Resources Code.

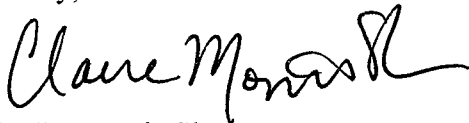
In summary, with the exception of the information we marked for release, the commission must withhold the information it marked and we marked under section 552.101 of the Government Code in conjunction with section 745.8493(a)(7) of title 40 of the Texas Administrative Code. The commission must also withhold the identities of the reporting

parties under section 552.101 in conjunction with section 745.8493(a)(2) of title 40 of the Texas Administrative Code. The commission must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a large initial "C" and "M".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 794202

Enc. Submitted documents

c: Requestor
(w/o enclosures)