



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2019

Mr. Jonathan Miles
Open Government Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

OR2019-33881

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# 799221 (OR-20190710-19026).

The Texas Health and Human Services Commission (the "commission") received a request for information related to the investigation of a specified facility. You state you have released some information to the requestor. 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.

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 of Family and Protective Services (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 executive commissioner [of the commission] shall establish and enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.
- (b) The executive commissioner 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. In accordance with section 40.005, the department promulgated section 745.8495 of title 40 of the Texas Administrative Code to provide that the department "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. 40 T.A.C. § 745.8495(a). Additionally, section 745.8495(b) provides that the department may allow four categories of individuals to "review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records," but those individuals "may not have a copy." *See id.* § 745.8495(b). You state the submitted information consists of a video recording that is subject to section 745.8495 of title 40 of the Texas Administrative Code. Further, you state "the requestor has not provided the [d]epartment with any indication that the requestor has a right of access to a copy of the photographs and audio recordings of children in the submitted information." However, we note section 745.8495(b)(2) of title 40 of the Texas Administrative Code provides that an operation cited for a deficiency as a result of the inspection or investigation during which the photographs were taken or the audio or visual recording was made may review but may not have a copy of the photographs or the audio or visual recording. *See id.* § 745.8495(b)(2). The submitted recording relates to an inspection or investigation that resulted in the operation at issue being cited for a deficiency. The requestor is a representative of the cited operation. Accordingly, the requestor may review but may not have a copy of the information at issue pursuant to section 552.101 of the Government Code in conjunction with section 745.8495 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 <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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 799221.

Enc. Submitted documents

c: Requestor
(w/o enclosures)