



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2020

Ms. Susan E. Tennyson
Open Records Attorney
Texas Department of Family and Protective Services
Department Mail Code E611
P.O. Box 149030
Austin, Texas 78714-903

OR2020-02421

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# 808152 (Ref No. R000664-102919).

The Texas Department of Family and Protective Services (the "department") received a request for thirteen specified investigations. You state you have released some information. You state you do not have information responsive to a portion 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 representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 40.005 of the

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² 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 that those records contain substantially different types of information than that submitted to this office.

Human Resources Code. Section 40.005 authorizes the department to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect, and provides, in relevant 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. 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 as follows:

(c) 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). The submitted information is related to investigations of alleged child abuse or neglect at foster care homes. The department informs us the information at issue is not information that must be maintained in the department monitoring file with respect to the investigations at issue. *See id.* §§ 745.8481(a) (information in monitoring file is for most part available to general public), .8487(a) (only those portions of abuse or neglect investigation record that must be filed in monitoring file may be released), .8489 (except for certain specified information, all records of abuse or neglect investigation maintained separate from monitoring file). The department seeks to withhold these records in their entirety as investigation files of abuse or neglect. The information at issue demonstrates the investigations are completed. Based on these representations and our review, we find the information at issue falls within the scope of section 745.8485(c). It does not appear the requestor is 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 in its entirety under section 552.101 in conjunction with section 40.005 of the Human Resources Code and section 745.8485(c) of title 40 of the Texas Administrative Code.³

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted 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 that reads "D. Michelle Case" followed by a horizontal line.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

Ref: ID# 808152

Enc. Submitted documents

c: Requestor
(w/o enclosures)