



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 13, 2022

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

OR2022-27993

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# 972100 (DFPS Ref. No. R002426-062222).

The Texas Department of Family Protective Services (the "department") received a request for all records related to two named individuals made during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. Additionally, you state release of the information at issue may implicate the interests the Texas Health and Human Services Commission and the Medicaid Fraud Control Unit of the Office of the Texas Attorney General. Accordingly, you state, and provide documentation showing, you notified these third parties of the

¹ We note the requestor modified the request for information in response to a cost estimate. *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). You state the department sent the requestor a new cost estimate of charges in response to the modified request for information pursuant to section 552.2615 of the Government Code and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the department received the required payment on July 12, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

request for information pursuant to section 552.304 of the Government Code.² *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(17). The submitted information includes a court-filed document that is subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you raise section 552.103 of the Government Code for the information subject to section 552.022(a)(17), this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, none of the information subject to section 552.022(a)(17) may be withheld under section 552.103 of the Government Code. However, as section 552.101 of the Government Code can make information confidential under the Act, we will consider your arguments under this section to the information subject to section 552.022(a)(17). We will also consider your argument against disclosure under section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code.

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. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only

² As of the date of this letter, we have not received comments from either notified third party.

³ 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.

for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the information you have marked is confidential pursuant to section 261.201 and indicate this information consists of records used or developed in providing services as a result of investigations of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Based on your representations and our review, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information and, therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses information section 40.005 of the Human Resources Code. 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.

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 remaining information at issue consists of information developed in an investigation of alleged child abuse or neglect at licensed child care facilities that were ongoing at the time the department received the request, and you assert the information at issue is confidential under section 745.8485(a). We understand 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 information at issue falls within the scope of section 745.8485(a). Accordingly, the department must withhold the remaining information you have marked and Exhibit C 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.⁵

Section 552.117(a)(16) of the Government Code, in part, excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former child protective services caseworker, adult protective services caseworker, or investigator for the department, regardless of whether the caseworker or investigator complies with section 552.024 or 552.1175 of the Government Code.⁶ Gov’t Code § 552.117(a)(16). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance, however, it is unclear whether the individuals whose information is at issue are current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department. Accordingly, if the individuals at issue current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department and the cellular telephone service is not paid for by a governmental body, then the department must withhold the cellular telephone numbers we have marked under section 552.117(a)(16) of the Government Code. Conversely, if the individuals at issue are not current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department or the cellular telephone service is not paid

⁵ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁶ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

for by a governmental body, then the information at issue may not be withheld under section 552.117(a)(16) of the Government Code.

If the individuals at issue are not current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department, then the information at issue may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individuals whose information is at issue are not current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department but timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the department must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the department may not withhold the information at issue under section 552.117(a)(1).

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the remaining information you have marked and Exhibit C 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. If the individuals at issue current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department and the cellular telephone service is not paid for by a governmental body, then the department must withhold the cellular telephone numbers we have marked under section 552.117(a)(16) of the Government Code. To the extent the individuals whose information is at issue are not current or former child protective services caseworkers, adult protective services caseworkers, or investigators for the department but timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the department must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code. The department 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 972100

Enc. Submitted documents

c: Requestor
(w/o enclosures)