



# Texas Department of Family and Protective Services

Office of General Counsel

Commissioner  
Jaime Masters, MS, MFT

September 28, 2022

Justin Gordon  
Division Chief  
Open Records Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear Mr. Gordon,

On September 14, 2022, the Texas Department of Family and Protective Services ("DFPS" or the "Department") received a request seeking multiple items, including emails, text messages, social media messages and the like from various named DFPS employees that include the key words "Abbott," "Ken Paxton," "transgender children," "sex-change procedures" and/or "gender affirming." The requestor filed 24 separate requests for information on September 14, which were consolidated into one request, R002699-091422, as provided in Section 552.261(e). (Attachment A) We believe that some of the requested information may be excepted from public release under sections 552.103, 552.107(1) and 552.111 of the Government Code.

We have marked a representative sample of each of the types of documents requested with the types of items we believe are confidential for your review. (Attachment B) The request for numbers of employees that have resigned from the agency in the years specified in the request will be released to the requestor. The requestor has asked for emails between a named person thought to be an employee of DFPS and an organization outside DFPS. The named person does not appear to be a DFPS employee and we have notified the requestor of that fact. The requestor further asks for contract documents that do not belong to DFPS and we have directed the requestor to the proper agency for those contract documents.

Initially, we note that some of the requested information was the subject of two previous requests made to this office and submitted to the Attorney General for ruling, DFPS ORR No. R001659-082021 and R002117-030322. Each of those requests asked for emails, text messages, letters, and memos regarding medical care for transgender children, Attorney General Ken Paxton's Opinion in KP-0401, and Governor's Abbott's Directive to DFPS concerning that opinion. With respect to the information at issue in all of the requests, we will rely upon the Attorney General rulings OR2021-31869 and OR2022-14829 and withhold or release the information in accordance with those rulings. Additionally, DFPS has released some 900 pages of emails, text messages, memos and letters for which no confidentiality is claimed to multiple requestors. We will release those same documents to the requestor in this case.

Next, we note a portion of the requested information is subject to the previous determination issued in Open Records Letter No. 2003-5590 (2003), which permits the Department to withhold information subject to section 261.201 of the Family Code from public release without the necessity of requesting an attorney general ruling. Accordingly, we will redact the information subject to this previous determination.

We will redact an employee's private address and phone number information pursuant to 552.024, social security numbers pursuant to 552.147; driver's license number, employment verification form I-9, W-2 and W-4 forms, and personal email addresses all pursuant to ORD-684.

Please use DFPS Reference Number R002699-091422 when discussing this request for ruling. This letter was deposited into intraoffice mail on September 28, 2022.

### **Section 552.103**

Section 552.103 of the Government Code provides, in part, that:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

- (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. Thus, if a governmental body can demonstrate that a request seeks information that relates to civil litigation that is pending or reasonably anticipated on the date the request was received, a governmental body may withhold such information under section 552.103 of the Government Code.

On the dates included in the request, litigation was pending in three separate cases. In one, the litigation is Cause No. D-1-GN-22-00077, in the 353<sup>rd</sup> Judicial District Court in Travis County, Texas. It was filed on March 1, 2022. In the second case, DFPS has been in litigation in a federal lawsuit, *MD v Abbott*, Case No. 2:11-cv-00084, in the U.S. District Court, Southern District of Texas, for several years. The third case is *PFLAG, et al. v Abbott, et al.*, Cause No. D-1-GN-22-002569. Accordingly, we seek to withhold the submitted information marked as pending litigation under section 552.103 of the Government Code. The Office of the Attorney General is also a party to the first and third causes of action and represents DFPS on all three cases. We believe that the attorney representing us in the litigation in which both offices are parties may want to provide a brief on this matter to your office.

Office of the Attorney General – Justin Gordon  
September 28, 2022

552.101/ 411.083 Government Code

The Department is required to obtain criminal history information from the Department of Public Safety for those employees who have duties including direct delivery of protective services to children, the elderly or persons with a physical disability. The Department is required to keep such criminal history information confidential.

Sec. 411.083. Dissemination of Criminal History Record Information.

(a) Criminal history record information maintained by the department is confidential information for the use of the department and, except as provided by this subchapter or Subchapter E-1, may not be disseminated by the department.

(b) The department shall grant access to criminal history record information to: ...

(2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;

Section 411.083(b)(2) Government Code.

Sec. 411.114. Access to Criminal History Record Information: Department of Family and Protective Services and Health and Human Services Commission.

(a) (2) The Department of Family and Protective Services or the Health and Human Services Commission, as applicable, shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(D) an applicant selected for a position with the Department of Family and Protective Services or the Health and Human Services Commission, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

411.114(a)(2)(D) Government Code.

In conclusion, the Department seeks to withhold the information we have marked or indicated under sections 552.103 and 411.083 of the Government Code.

If your staff has any questions about this request for a decision, please contact me at 512-960-9397.

Thank you.



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Enclosures

Office of the Attorney General – Justin Gordon  
September 28, 2022

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