



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

April 11, 1990

Mr. Ron H. Lindsey
Commissioner
Texas Department of
Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR90-141

Dear Mr. Lindsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S.. Your request was assigned ID# 8824.

The Texas Department of Human Services received a request from a reporter for copies of the following information:

1. Case records for all children who died in Harris County while under CPS [Child Protective Services] care from 1984 to 1989.
2. Case records of all children who died in the State of Texas while under CPS care in 1988 and 1989.

The reporter specified that by "under CPS care," she meant "children who had previous involvement with CPS whether their case was open or closed at the time of their death." In a conversation with Mr. Bill Buida, Assistant General Counsel, Texas Department of Human Services, on February 20, 1990, the reporter indicated that she would be satisfied with access to case files which have names deleted.

You assert that the requested information is excepted from public disclosure pursuant to sections 3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(11) of the Texas Open Records Act, article 6252-17a, V.T.C.S. We agree that the requested materials are excepted by section 3(a)(1), which excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial

decision." Because we base our decision on section 3(a)(1), we need not address the other exceptions you claim.

Section 34.08(a) of the Family Code states:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.¹

The Department of Human Services [DHS hereinafter] has adopted the following regulations which are relevant to this inquiry and which support our conclusion:

§ 49.102. Confidential Information

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and DHS rules concerning disclosure of information and confidentiality of information in Chapter 71 of this title (relating to Public Information).

§ 49.103. Public Information

A child protective services client may review all information in the client's case record except the identity of the complainant, information exempted from disclosure under the Open Records Act, and information exempted under other state laws.

40 T.A.C. §§ 49.102, 49.103; see also id. ch. 71.

Chapter 71 of title 40 of the Texas Administrative Code is primarily concerned with the transfer of DHS records

1. Subsections (b) and (c) of section 34.08 of the Family Code are concerned with the rights of adoptive parents of a child who was the subject of an investigation, adults who as children were the subject of an investigation, and prospective adoptive parents of a child who was the subject of an investigation.

between state, regional and unit offices, and between DHS and other agencies. Subsection (6) lists specific information which is public; subsection (7) lists public information exceptions. There is no provision among the regulations of chapter 71 for the release of CPS file records to a member of the public. Further, section 71.11(a) provides that "information collected in determining initial or continuing eligibility to receive assistance or services is considered and treated as confidential because of the need to protect clients from embarrassment or exploitation, and to foster relationships which facilitate the securing of necessary information from applicants, recipients, and references for the accomplishment of service goals." There are several other regulations in chapter 71 regarding the confidential nature of the information in CPS case files. See, e.g., 40 T.A.C. §§ 71.15, 71.1(6)(L), 71.1(7)(A).

We have reviewed the representative samples of cases you sent to this office and find that they consist of "reports, records, and working papers used or developed in an investigation" under chapter 34, "Report of Child Abuse." Section 34.08 of the Family Code makes this information confidential. See Open Records Decision No. 440 (1986). The information sought is also excepted from public disclosure by section 3(a)(1) of the Open Records Act as information deemed confidential by constitutional law, because it is within the realm of family privacy. See Open Records Decision No. 73 (1975).

The deletion of names in the case files, as was proposed, would not satisfy the confidentiality requirements of section 34.08 in this instance. Subsections (b) and (c) do allow for such editing of files, but only for examination by the adoptive parents of a child who was the subject of an investigation, by an adult who was the subject of an investigation under this chapter as a child, or by prospective adoptive parents prior to placing a child who was the subject of an investigation under this chapter.

In conclusion, you must withhold the requested case files of children who have died while under CPS care as this information is deemed confidential by statutory and constitutional law. This is true even though the subjects of the files are now deceased. See Attorney General Opinion JM-851 (1988).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-141.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 8824, 9249

Enclosure: Documents Sent
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