



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1992

Mr. Burton F. Raiford
Interim Commissioner
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR92-385

Dear Mr. Raiford:

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# 16345.

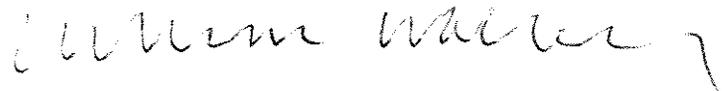
The public requestor seeks from the Department of Human Services the foster care file of a child who had died while in the custody of foster parents. You object to releasing certain of the requested information, namely a staffing report on the death by the department's child death review committee; a September 6, 1991, memorandum from a departmental employee which was prepared as a summary to accompany the report; and an October 18, 1991, memorandum from a departmental employee making recommendations regarding the investigation of the foster parents.

You assert that the report and the September 6, 1991 memorandum must be withheld from public disclosure under section 3(a)(1) of the Open Records Act. Section 3(a)(1) requires withholding of, *inter alia*, information made confidential by statutory law. You direct our attention to section 34.08 of the Family Code, which makes confidential, with exceptions we do not understand to be applicable here, "reports, records, and working papers used or developed in an investigation" of alleged child abuse made under Family Code chapter 38. We agree that the death review report and the September 6, 1991 memorandum must be withheld under section 34.08 in conjunction with section 3(a)(1) of the Open Records Act. See Fam. Code § 34.08; Open Records Decision No. 587 (1991) (confidentiality of Family Code chapter 34 reports under section 34.08) (copy enclosed).

You also claim that the October 16, 1991 memorandum may be withheld under section 3(a)(11) of the Open Records Act. Section 3(a)(11) excepts from required disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Section 3(a)(11) generally protects such material when it consists of advice, opinion, or recommendation used in the deliberative process. Open Records Decision No. 574 (1990) (copy enclosed). You advise that the October 16, 1991 memorandum constitutes a recommendation to the department staff member who has the final decision-making authority in the matter discussed. We conclude that that memorandum may be withheld under section 3(a)(11).

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 OR92-385.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/lmm

Ref.: ID# 16345

Enclosure: Open Records Decision Nos. 574, 587

cc: Mr. John O'Shea
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(w/o enclosures)