



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 24, 1994

Janice M. Caldwell, Dr. P.H.  
Executive Director  
Texas Department of Protective and  
Regulatory Services  
P.O. Box 149030, W-639  
Austin, Texas 78714-9030

OR94-259

Dear Dr. Caldwell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (formerly V.T.C.S. article 6252-17a).<sup>1</sup> We have assigned your request ID# 24794.

The Texas Department of Protective and Regulatory Services (the "department") has received two requests for both access to and a copy of a certain videotape developed in a child abuse investigation conducted under chapter 34 of the Texas Family Code. In the first request, the requestor, who you indicate is a Child Protective Services ("CPS") client, seeks to view the videotape, which depicts an interview with the requestor's child and a CPS caseworker, and also requests that a newspaper reporter be permitted to view the videotape and make an audio recording of it. In the second request, the requestor seeks a copy of the videotape. You do not object to permitting the requestor to view the videotape herself, and you advise that the department routinely grants similar requests. You claim, however, that section 34.08 of the Family Code prohibits the newspaper reporter from viewing the videotape and making an audio recording of it. You object on the same grounds to releasing a copy of the videotape to the requestor.

First, we address whether the reporter may view the requested videotape or make an audio copy of it. Section 552.101 of the act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 34.08 of the Family Code provides as follows:

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(a) Except as provided in Subsections (b) and (c) of this subsection, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.<sup>2</sup> [Footnote added.]

*See* Open Records Decision No. 587 (1991) (concluding that section 34.08 prohibits public disclosure of records of child abuse investigations). You have not cited, nor are we aware of, any department regulation that permits the reporter to have access to or a copy of the requested videotape. Accordingly, section 552.101 of the act in conjunction with section 34.08 of the Family Code prohibits the department from giving the reporter access to or a copy of the requested videotape.

Next we address whether the requestor may have access to and a copy of the requested videotape. As noted above, section 34.08 of the Family Code makes the videotape confidential and authorizes disclosure only for purposes consistent with the purposes of the Family Code under regulations adopted by the investigating agency. We note that the department has promulgated a regulation that governs release of CPS case information to CPS clients. 40 T.A.C. § 700.103. Section 700.103 provides:

A child protective services [CPS] 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. [Emphasis added.]

*See also* 40 T.A.C. § 734.11 (governing the release of case record information that the department collects in determining eligibility to receive department services).<sup>3</sup> While section 700.103 permits a CPS client to "review" information in the client's case record, it does not on its face permit release of copies of case records. *See also* Open Records Decision No. 587 (holding that section 552.023 of the Government Code cannot operate to give any individual a special right of access to information within the protection of section 34.08 of the Family Code). You have not cited, nor are we aware of, any department regulation permitting release of copies of case records.<sup>4</sup> Therefore, the

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<sup>2</sup>Subsections (b) and (c), which provide for disclosure of investigative materials to adoptive parents and prospective adoptive parents, respectively, are not applicable in this instance.

<sup>3</sup>We assume for purposes of this ruling that the above cited CPS regulations governing access to a client case record are "consistent with the purposes" of the Family Code pursuant to section 34.08.

<sup>4</sup>We note that the department refers to Item 1452 of a "Child Protective Services Handbook," which appears to authorize release of CPS client information under certain circumstances. We do not

department must not release a copy of the requested videotape to the requestor. The department may, however, permit the requestor, who is a CPS client, to review the videotape, provided that the name of the complainant is not revealed.<sup>5</sup>

Because 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 contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/rho

Enclosure: Submitted videotape

Ref.: ID# 24794  
ID# 24795  
ID# 24796  
ID# 24797

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(Footnote continued)

address in this ruling whether this provision is consistent with section 34.08 of the Family Code or title 40, section 700.103 of the Texas Administrative Code.

<sup>5</sup>In your letter to this office dated July 16, 1993, you indicate that "the Department does release copies of edited written records of the child abuse investigation to parents." You contend, however, that a videotape should be treated differently from a written record and that therefore a parent should only be allowed access to but not copies of the videotape. We do not address in this ruling the department's practice of releasing edited versions of written reports to parents. We note, however, that the Open Records Act does not generally distinguish between information in the form of a written record and information in the form of a videotape. See Open Records Decision No. 364 (1983) (concluding that a videotape constitutes a "developed material" within the definition of "public record" under the predecessor to section 552.002 of the Government Code).