



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 6, 1995

Ms. Jean Wallace  
Staff Attorney  
Texas Department of Protective  
and Regulatory Services  
P.O. Box 149030, E-654  
Austin, Texas 78714-9030

OR95-1359

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36353.

The Texas Department of Protective and Regulatory Services (the "department") received a written request from an MHMR staff member for the report of the department's investigation of the requestor's alleged abuse of a child in her care. You contend the requested records are confidential pursuant to section 261.201 of the Family Code and thus may not be released.

We note at the outset that is not clear to this office whether the request submitted by the staff member may properly be deemed as a request for information under the Open Records Act. You have submitted to this office a copy of correspondence dated September 6, 1995, in which the department advises the requestor of her

right to request, in writing, a copy of the investigation report . . . .  
The requested copy will be de-identified prior to release in accordance with Adult Protective Services policy and state law. Your request for the record may be denied if release of the record jeopardizes an on-going criminal investigation or prosecution or if the attorney representing APS in a lawsuit arising from this case has determined that the record may not be released. Your written request for a copy of the investigative report must be postmarked by the seventh day from receipt of this notice or you have **Waived your Right to**

**Obtain a Copy of the Investigative Report.** (Emphasis in original.)

A parent or other person having legal custody of a child has a qualified right of access to investigatory materials when that person is suspected of abusing the child. Act of April 20, 1995, ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 264. However, this office is not aware of any statutory basis for releasing investigatory materials to other individuals suspected of abusing a child. Nor is this office aware of any legal basis for limiting the time in which investigatory materials may be requested. If the procedure outlined above reflects an internal policy applicable to MHMR staff, the release of the information at issue is not governed by the Open Records Act and any release to a staff member made pursuant to that policy would not constitute a release of the information to the public for purposes of the Open Records Act. *Cf.* Open Records Decision No. 468 (1987) (governmental body may have a policy of showing employees governmental records without thereby voluntarily making them public). *See also* Attorney General Opinion JM-1235 (1990). If such is the case, this office is not the proper forum for deciding whether the requested records are subject to disclosure.

In the event, however, that the current request is governed by the Open Records Act, we will proceed with our discussion of the exceptions that you raise. Although you contend that the requested information may be withheld from the requestor pursuant to the "law-enforcement" exception, section 552.108 of the Government Code, we believe that the more appropriate exception is section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend the requested information is deemed confidential under the statutory successor to section 34.08 of the Family Code. *See* Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262; Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3924. The new relevant provision of the Family Code now provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only 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 [of a child] 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.*

Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3924 (to be found at section 261.201 of the Family Code) (emphasis added, footnote added). Because you have not cited, and we are not aware of, any specific provision under the Family Code that would authorize the release of the requested information in this instance, we conclude that the requested records are confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 (1986) at 2 (predecessor statute). Accordingly, the department must withhold these records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Records Division

MAR/RWP/ch

Ref.: ID# 36353

Enclosure: Submitted records

cc: Ms. Anita L. Miller  
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(w/o enclosure)