



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1996

Mr. Dale W. Lee
Regional Attorney
Texas Department of Protective
and Regulatory Services
P.O. Box 3700
Amarillo, Texas 79116-3700

OR96-0842

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39527.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for any records concerning the investigation of a certain individual for alleged child abuse. The requestor is an attorney for the accused, who is a parent of the victim of the alleged abuse. You contend that the department may withhold the requested records from the public pursuant to sections 552.101, 552.103(a) and 552.108 of the Government Code.

You assert that sections 552.103 and 552.108 apply to the requested information because you say it relates to a pending criminal prosecution. You enclosed a letter from Mr. C. D. Blount, Assistant District Attorney for Randall County, Texas, in which Mr. Blount requests that the department withhold the requested information because a case "is currently under official investigation by this department [and] under current or pending criminal prosecution." The letter also states that the release of the requested records would hinder the investigation or prosecution of the case.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 261.307 of the Family Code, states in part as follows:

As soon as possible after initiating an investigation of a parent or other person having legal custody of a child, the department shall provide to the person a brief and easily understood summary of:

(3) the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation;

We need not address whether section 261.307 gives the requestor's client a right to review investigative records, since we believe that the district attorney has established that such review would jeopardize the pending criminal investigation.

Section 261.201(a) of the Family Code reads as follows:

(a) 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 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.

The requested information consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information.

Subsection (f) of section 261.201 of the Family Code reads as follows:

Notwithstanding Subsection (b),¹ the department, on request and *subject to department rule*, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Family Code § 261.201(f)(emphasis and footnote added). Subsection (f) requires the department to provide certain parties, including a parent of a child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here is an attorney for the parent of the child involved in the investigation, we must consider whether the department must release the requested information to the requestor pursuant to subsection (f). However, the department's release of the information pursuant to subsection (f) is "subject to department rule. We will consider whether the department's rules provide for the disclosure of the requested information to the requestor.

Section 700.102 of title 40 of the Texas Administrative Code states that:

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 the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

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.

¹Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a)

40 T.A.C. § 700.103 (emphasis added). This rule permits a “client” to review that client’s case record, with the exception of the complainant’s identity and information excepted from disclosure under the Open Records Act and other state laws. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). The department’s “SSMS Client Registration Turnaround Document” contains a space for the client name and for the case name. In completing these forms, the department supplied the names of the children and the father of the family under investigation for the client name. The department supplied the name of the alleged perpetrator for the case name. We are unable to determine whether the department considers the requestor’s client, a parent here, a “client” for purposes of section 700.103. However, even if the department does so consider, the regulation provides an exception to a client’s right to review the client’s case record for information “exempted from disclosure under the Open Records Act.” We now proceed to consider whether the information is exempted from disclosure under the Open Records Act.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information “relates” to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision Nos. 588 (1991), 551 (1990). In this instance, we believe that the letter from the assistant district attorney in which he states that the requested records relate to a pending criminal prosecution establishes that the requested information relates to pending litigation. We, therefore, conclude that the requested records are excepted from required public disclosure based on section 552.103 of the Government Code.²

²We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In any case, the department may not disclose the complainant’s identity. *See* Family Code § 261.201(f); 40 T.A.C. § 700.103. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

As the information is excepted from disclosure under the Open Records Act, section 700.103 of title 31 of the Texas Administrative Code does not permit a client to review the client's case record information. We do not believe any of the department's regulations permit the disclosure of the requested information to the requestor. Therefore, subsection (f) of section 261.201 does not require the department to provide the requested information to the parent here. Thus, as the department's regulations do not permit disclosure of the requested information, such information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 39527

Enclosures: Submitted documents

cc: Mr. William E. Kelly, III
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(w/o enclosures)

³We note that section 552.103 of the Government Code is a discretionary exception. The department may choose to release an investigative file to a "client" under section 700.103 of title 40 or to a "parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect" pursuant to subsection (f) of section 261.201 of the Family Code.