



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

Ms. Dorothy Petrilla
Texas Department of Protective
and Regulatory Services
P.O. Box 3700
Amarillo, Texas 79116-3700

OR96-1050

Dear Ms. Petrilla:

You have asked 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# 39855.

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 individual and has submitted an authorization form, signed by a biological parent of the alleged victim, to inspect the records. You contend that the department may withhold the records pursuant to section 552.108.

You contend that section 552.108 is applicable to the records because of a pending criminal investigation. You enclosed a letter from Lt. O.G. Akmal of the Deer Park Police Department asking that the information not be released because the case is currently under investigation by the Deer Park Police Department. The letter also states that release of the requested records could hinder the investigation or prosecution of the case.

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

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 it has been established 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, making it generally confidential.

We note that section 261.201(f) contains an access provision that may be applicable to the parents of the alleged victim:

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.

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

Family Code § 261.201(f)(footnote added). The requestor has provided a parental consent form, but this provision does not provide for a parent to give consent to others to review the records.

We note that the department has rules concerning access to records by “a child protective services client.” Although the requestor’s client in this situation is not a parent, it seems that this individual is a “client” of the department as defined by departmental rules. 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.

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.² *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions).

Assuming that the requestor’s client might have generally been afforded access to these records, the department has shown that the information at issue in this case may be withheld under the Open Records Act. Section 552.108 excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation or prosecution of crime. . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. . . .

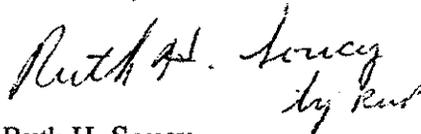
This section may be invoked by the proper custodian of information relating to an ongoing investigation or prosecution of criminal conduct. We believe that the department has shown the applicability of section 552.108 to the records at issue so that they may be withheld from disclosure.

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

²We note that parental access is also restricted by this provision.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Ruth H. Soucy" with "by Ruth" written below it.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: #39855

Enclosures: Submitted documents

cc: Mr. Roy W. Smith
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(w/o enclosures)