



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1996

Ms. Celamaine Cunniff
Regional Attorney
Texas Department of Protective
and Regulatory Services
P.O. Box 4300
Tyler, Texas 79116-3700

OR96-1210

Dear Ms. Cunniff:

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# 40634.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for all records concerning two children. The requestor is the biological mother of the children. You contend that the department may withhold the requested records from the public pursuant to section 552.108 of the Government Code.

You assert that section 552.108 applies to the requested information because you say it relates to a pending criminal prosecution. You enclosed a letter from Ms. Leslie Poynter Dixon, District Attorney for Van Zandt County, Texas, in which Ms. Dixon requests that the department withhold the requested information because a case "is currently pending criminal prosecution by this office in Cause No. 95-478." The letter also states that the release of the requested records would hinder the investigation and 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 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 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 here 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 provides:

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) (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 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.

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 "CANRIS report" appears to list the requestor as a department client. However, even if the department considers the requestor a client under these circumstances, the regulation makes an exception to a client's right to review information in 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.

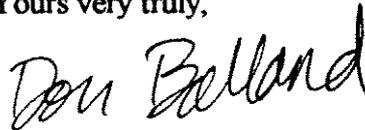
In this instance, you have provided this office with a letter from the district attorney. He states that "this case is currently pending criminal prosecution" The letter also states that the release of the requested records would hinder the investigation and prosecution of the case. Section 552.108 excepts from disclosure "[i]nformation held by a

law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n 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.” Gov’t Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We therefore conclude that section 552.108 of the Government Code excepts the requested records from required public disclosure.

In summary, as the requested information is excepted from disclosure under the Open Records Act, section 700.103 of title 31 of the Texas Administrative Code does not apply to permit a client to review all of the client’s case record information. We do not believe that 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 262.201(a) of the Family Code.²

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 40634

Enclosures: Submitted documents

²We note that section 552.108 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 262.201 of the Family Code.