



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1996

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

OR96-1444

Dear Ms. Young:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34245.

The Texas Department of Protective and Regulatory Services (the "department") received a request for copies of the records in a case that were investigated by the department. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.¹

¹Chapter 552 of the Government Code imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third party interests). The request was apparently made on March 31, 1995, but the department did not ask this office for a ruling until June 15, 1995. However, as either a statute applies or another governmental body's interest is involved here, we find that a compelling reason exists as to why the information should not be made public. See Open Records Decision No. 586 (1991). Therefore, we address your claimed exceptions to disclosure.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(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;

(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.²

(Footnote added). The department’s release of the information pursuant to subsection (a) is “subject to department rule.” Therefore, we must first 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).

²Section 261.201 was added to the Family Code in the last legislative session and became effective, as amended, on September 1, 1995. Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262 (Vernon); Act of May 25, 1995, 74th Leg., R.S., ch. 751, §§ 93, 129, 1995 Tex. Sess. Law Serv. 3888, 3924, 3933 (Vernon). We apply the new law, as the request for information was received by the governmental body after September 1, 1995. However, we note that the result would be the same regardless of which law we applied to the requested 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:

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. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). We cannot ascertain whether the alleged perpetrator is a "client" for purposes of section 700.103. If the alleged perpetrator is not a "client," then the department has made no provision for release of the information to him and the information is confidential under section 261.201(a).

If the alleged perpetrator is a "client" for purposes of section 700.103, we address whether he may review the requested information. Section 700.103 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.

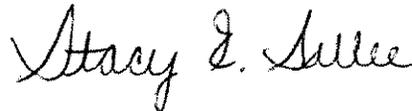
Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters 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).

Here, the requestor is the alleged perpetrator of the child who is the subject of the investigation about which he is seeking information. You have provided us with a letter from the Orange County Attorney, which states that the Orange County Sheriff's Department "is currently conducting an investigation into alleged abuse of this child. The letter also states that the release of the requested records could be "devastating to the criminal investigation." This office has previously held that section 552.108 may be invoked by any proper custodian of records. Open Records Decision Nos. 474 (1987), 372 (1983). Accordingly, you may withhold the requested information under section 552.108 of the Government Code.³

³We note that there may be a conflict between the provisions of section 261.201(f) and the department's current regulations, as section 261.201(f) appears to be a parental access provision while the

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 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 "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref: ID# 34245

Enclosures: Submitted documents