



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Ms. Celamaine Cunniff
Regional Attorney
Texas Department of Protective
and Regulatory Services
P.O. Box 4300
Tyler, Texas 75712

OR96-2242

Dear Ms. Cunniff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36363.

The Texas Department of Protective and Regulatory Services (the "department") received a request for copies of the records in a case that was investigated by the department. The requestor is an attorney for the alleged perpetrator, who was the stepfather of the victim of the alleged sexual abuse. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 261.201 of the Family Code provides that, except as otherwise provided by that section, the files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 or in providing services as a result of an investigation are confidential and not subject to release under chapter 552 of the Government Code. Fam. Code § 261.201(a)(2). Here, the requested records are within the purview of Family Code section 261.201(a)(2). The requestor was the child's stepfather, but he is now divorced from the child's mother. Because the requestor is neither a parent nor a child protective services "client," we need not conduct an analysis under Family Code section 261.201(f)¹ and section 700.103 of title 40 of the Texas Administrative Code.²

¹Subsection (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. See Fam. Code § 261.021(f).

²Section 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.

Therefore, the department must withhold the requested documents pursuant to Family Code section 261.201(a)(2).

Moreover, 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*, 924 S.W.2d 920 (Tex. 1996).

You have provided us with a letter from Ms. Carol Dalby, an Assistant District Attorney from Bowie County, which requests that the requested records be withheld because this case is “currently under official investigation and [under] current or pending criminal prosecution.” The letter further states that release of the requested records would hinder the investigation and prosecution of this case. 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 also withhold the requested information under section 552.108 of the Government Code.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 36363

Enclosures: Submitted documents

cc: Mr. Howard A. Carney, Jr.
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(w/o enclosures)