



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 19, 1996

Mr. John T. Richards  
Assistant General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78714-9104

OR96-2448

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102583.

You inform us that the Texas Department of Health (the "department") received a request concerning "the reports of contact and any other information relating to two complaints" at the Healthcare Rehabilitation Center. You have submitted some information for our review, which the department contends is "confidential under the Texas Family Code, § 261.201 (Vernon 1996)." We have considered the arguments you have made and have reviewed the information at issue.

In reviewing your request for a ruling from this office and the date on which the department received the request for information it is evident that you have failed to meet the requirements set out in section 552.301. Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* [Emphasis added].

Section 552.302 provides that:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

Since the department received the request on September 19, 1996, and requested a decision from this office on October 1, 1996, the department failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the department did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The presumption that requested information is public information may be overcome by a showing that the information at issue is deemed confidential by some source of law outside the act, and is therefore excepted from disclosure by section 552.101 of the Government Code. *See* Open Records Decision No. 150 (1977). The department asserts the requested information is made confidential by section 261.201 of the Family Code; and, therefore, it must be withheld from disclosure in conjunction with section 552.101 of the Government Code.

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.* (Emphasis added).

The requested records were developed during investigations of child neglect. Section 261.001 of the Family Code provides:

(4) "Neglect" includes:

...

(B) the following acts or omissions by a person:

(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity

We are not aware of any rules promulgated by the department which permit the dissemination of this type of information. Accordingly, we agree that the requested information is made confidential by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, sweeping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/cbh

Ref.: ID# 102583

Enclosures: Submitted documents

cc: Ms. Margaret O'Sullivan  
1106 West Dittmar Road  
Austin, Texas 78745  
(w/o enclosures)