



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1997

Ms. Linda Wiegman
Supervising Attorney
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-0984

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105717.

The Texas Department of Health (the "department") received a request for information relating to an investigation of the alleged sexual abuse of a minor, as well as information regarding the protocol used when conducting investigations of this nature. You have not objected to releasing information regarding the department's protocol. Therefore, we assume that you have released this information to the requestor. You do, however, object to releasing the information relating to the investigation of alleged sexual abuse. You assert that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You note that you did not submit your request for a decision to this office within ten days of receiving the request for information. Chapter 552 of the Government Code imposes a duty on a governmental body 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 information is made confidential by another source of law or affects third party interests).

In accordance with sections 552.301 and 552.302, the records at issue are presumed public. However, you contend that the information at issue is confidential by law. Because the

presumption of openness is overcome by a showing that information is confidential by law, we must consider your claim.

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.

The information at issue falls within the scope of section 261.201(a). The other provisions of section 261.201 do not appear to apply here. We also are not aware of any rules promulgated by the department which permit the dissemination of this type of information. Accordingly, we conclude that the 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. *See* Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 105717

Enclosures: Submitted documents

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