



Office of the Attorney General

State of Texas

July 27, 1998

DAN MORALES
ATTORNEY GENERAL

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

OR98-1768

Dear Ms. Wiegman:

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# 117199.

The Texas Department of Health (the "department") received a request for information concerning an investigation of Columbia Brownwood Regional Medical Center's care and treatment of a certain patient. You assert that the requested information is made confidential by section 261.201 of the Family Code and therefore is excepted from required public disclosure under section 552.101 of the Government Code. Government Code section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. You have submitted the requested information to this office for review.

The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. See Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. See *id.* § 552.302; *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, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 261.201(a) of the Family Code which provides 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.

See also 25 T.A.C. § 1.207 (confidentiality of Family Code § 261.201 investigative process and report). The submitted records appear to constitute “files, reports, records, communications, and working papers used or developed in an investigation” under chapter 261 of the Family Code and are thus confidential. *See* Open Records Decision No. 440 (1986) at 2 (predecessor statute). Accordingly, the requested documents are made confidential by section 261.201 of the Family Code, and the department must withhold them from public 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 117199

Enclosures: Submitted documents

cc: Ms. Anne Marie Gorman
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(w/o enclosures)