



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 16, 2003

Mr. James G. Nolan
Senior Attorney
Legal Services Division
Texas Department of Protective and Regulatory Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2003-3313

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181150.

The Texas Department of Protective and Regulatory Services (the "department") received a request for ten categories of information relating to the case of a named child. In particular, the requestor asks for:

1. A list of the names of the caseworkers assigned to [the child's] case and when they were assigned
2. The files of the caseworkers regarding [the child's] case
3. Any documents showing the current caseload at CPS for each caseworker. Any documents showing if this is an increase or decrease from previous years.
4. Any documents related to the plans developed to reunite [the child] with her father
5. [The child's] progress reports
6. Any other memos or files related to [the child's] case
7. Any documents showing the numbers of children (in the most recent year for which figures are available) who are returned to parents who

are suspected of abusing those children. Any documents showing what percentage is that of the total number of children whose cases CPS was involved in at the time

8. Any documents showing in how many cases in question #6 [sic] is a new allegation of abuse or neglect confirmed that involves the parents
9. Any documents showing the number of children placed up for adoption, or in permanent foster care or with relatives other than their parents during the same time period as question #6 [sic]. Any documents showing the number of children returned to their parents who are not suspected of abusing their kids during the same time period as #6 [sic].
10. Any CPS policies regarding placement of children

You indicate that the requestor clarified the scope of the request in conversations with department staff. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification). You indicate, and provide documentation showing, that the department will provide some of the responsive information to the requestor. In particular, you have submitted a copy of a letter from the department to the requestor providing the department's responses to items 1, 3, 7, 8, 9, and 10 of the request. You also state that you have released personnel information responsive to item 2.¹ You claim that information responsive to items 4, 5, and 6, as well as information responsive to item 2, to the extent it consists of investigative records or records of services provided, is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not sought an open records decision from this office within the ten business day time period prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(a), (b). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest exists when some other source of law makes the information confidential

¹ You state that, pursuant to your communications with the requestor concerning the scope of the request, you have redacted portions of the personnel information you have released to the requestor.

or when third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Section 261.201(a) of the Family Code 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state, and the documents reflect, that the submitted information was created and maintained as part of Child Protective Services investigations of abuse or neglect, and as part of files created to document services provided to a victim or family as a result of such investigations. We therefore find that the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the submitted information from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 181150

Enc: Submitted documents

c: Ms. Claire Osborne
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)