

TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

EXECUTIVE DIRECTOR
Janice M. Caldwell, Dr. P.H.

July 9, 1993

JUL 09 1993

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The Honorable Dan Morales
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-21140-93

I.D.# 21140

RD-648

Dear General Morales:

RE: OPEN RECORDS DECISION REQUEST

A PRS client, mother of a minor child victim of sexual abuse has asked to view a videotaped interview with her child made by a Child Protective Service caseworker. The interview concerns the sexual abuse of the child. This is a request that we routinely grant, for reasons set forth below. However, the client has requested that a third party member of the public (a newspaper reporter) be permitted to view the videotape with her and make an audio recording of it. The Department's position is that based on Section 3(a)(1) of the Open Records Act, §34.08, Texas Family Code and the implementing rules and the common law right to privacy, we may refuse to grant this request.

Under §34.05, Texas Family Code, all reports of abuse or neglect of children received by the Department must be investigated. If the victim of alleged sexual abuse is 12 years of age or younger, a videotape of the caseworker's interview of the child victim is made. Standards for such videotapes are set forth in §11.21, Texas Family Code.

Section 34.08, Texas Family Code provides that "...reports, records and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes of this code under regulations adopted by the investigation agency."

It is the Department's position that this type of videotape is clearly a record or report developed during an investigation and is therefore confidential by statute and excepted from disclosure to the public under Article 6252-17a §3(a)(1), the Texas Open Records Act.

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In compliance with §34.08, Texas Family Code, the Department has promulgated certain regulations permitting disclosure of materials gathered in an investigation for purposes consistent with the purposes of the Family Code. Consistent with the purpose of preventing further abuse and obtaining proper treatment for past abuse and consistent with the innate right of a parent, legal guardian or managing conservator to be aware of incidents involving their minor children, the Department permits parents, managing conservators or legal guardians to review edited investigative reports. (see attached copies of pertinent sections of the Child Protective Services Handbook, particularly Items 1450, 1451, 1452 and 1452.8). Various other entities may receive unedited or edited copies of investigative reports consistent with the purpose of preventing, prosecuting or treating child abuse. (see attached CPS Handbook sections.) Third party members of the public have no right to any report created during the investigation. Item 1452, CPS Handbook, (see attached copy) states that a worker may disclose confidential information to a third party when the client consents in writing. However, it is the Department's position that this rule is used to release information to third parties with an interest consistent with the purposes of the Family Code such as doctors, therapists and attorneys.

It is the Department's position that disclosure of the videotaped interview is also protected by the common law right to privacy. The special graphic nature of the videotape and the embarrassing and intimate topic of the interview of the child victim are of no legitimate concern to the public and release of this video would be highly objectionable to a reasonable person. Consistent with this position, the Department releases no copies of the videotape (except to law enforcement) absent a court order. Parents, managing conservators, legal guardians and legal representatives of those parties or the child are permitted to view the videotape because of their relationship to the child.

In addition to the privacy of the child, the privacy interest of those third parties named by the child in the videotape must also be protected. Individuals named in conjunction with sexual abuse allegations, whose offenses are unadjudicated, have a clear privacy interest that should be protected and would be violated if third party members of the public were allowed to see the tape.

It is the Department's position that the department's regulations and §34.08, Texas Family Code govern the right of access to investigative records. In Open Records Decision No. 587, you determined that §3B of the Open Records Act, governing the special right of access did not apply to investigative records covered under §34.08, Texas Family Code.

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It is the Department's position that based on §34.08, Texas Family Code and the department's regulations on rights of access and the common law right of privacy, that the Department may refuse to permit third party members of the public with no interest consistent with the purposes of the Family Code the right to view the videotaped interview, regardless of the client's consent. Because this issue is likely to arise again many times, we ask the Attorney General to consider whether PRS is required to allow a third party a member of the public to view a videotape created during a child abuse investigation, when the client-parent of the child subject of the videotape gives consent.

The video is in the process of being copied and will be forwarded to you as soon as possible.

If you have questions on this matter, please contact Jean Wallace, Staff Attorney, at 450-3103.

Thank you for your prompt response.



Janice M. Caldwell, Dr. P.H.

JMC:dlc

c: Deborah L. Churchill
General Counsel, E-611



TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

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Janice M. Caldwell, Dr. P.H.
July 16, 1993

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The Honorable Dan Morales
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

GOV

FILE # ML-21140-93

I.D.# 21140 7/28/93

Dear General Morales:

RE: ID#21140

This department recently submitted an open records decision request to you concerning the viewing of videotapes made during the course of an child abuse investigation. A new, but related issue concerning the same facts has arisen.

The same mother of the child victim of sexual abuse has now filed a request under the Open Records Act to be given a copy of the videotape. It is the policy of PRS that no copies of videotapes are given to anyone (other than law enforcement) without a court order. This position is based on Section 3(a)(1) of the Open Records Act and §34.08, Texas Family Code as well as the common law right to privacy. All of the privacy and statutory arguments and reasoning contained in our initial request for an open records decision are valid for this new question as well. (see attached copy.)

Privacy and confidentiality concerns are even more paramount in this instance because once released, the Department has no control over the videotape and there can be no guarantee of any confidentiality or privacy.

PRS strongly believes controlling access to the videotape is the only way to fulfill our statutory duty to maintain confidentiality.

It is true that the Department does release copies of edited written records of the child abuse investigation to parents and a parent could, if she or he wished, share that written record with anyone else. However, the Department strongly believes that videotapes because of their graphic nature and embarrassing topic should be treated differently. The format of videotape is such that the impact of the statements made is far greater than the impact of those same statements in written form. Also, anyone viewing the tape actually sees the face of the child victim.

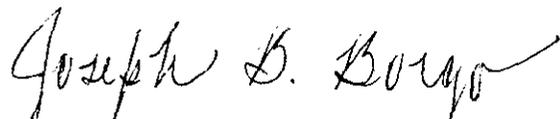
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While it is reasonable that a parent needs copies of the written record to be able to review and comprehend the lengthy reports, it is not reasonable to argue that a parent needs a copy of the videotape. Videotapes are brief and easy to comprehend. A parent's inherent right to know about things concerning his or her child is clearly satisfied by allowing the parent to view the videotape, more than once if necessary. There is no public interest served by release of this tape.

Therefore, the Department asks you to include this topic in the open records decision you render and reurges all statutory, confidentiality and privacy arguments in our original request.

Enclosed is a copy of the video tape in question.

Sincerely,



for Janice M. Caldwell, Dr. P.H.

JMC:dlc