



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1996

Ms. Mary E. Glover
Texas Department of Protective
and Regulatory Services
P.O. Box 6635
Abilene, Texas 79608-6635

OR96-2124

Dear Ms. Glover:

You have asked 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# 101752.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for records concerning a child and her parents. The requestor is an attorney for the biological father of the now deceased child. You contend that the department may withhold the records pursuant to section 552.108.

You contend that sections 552.101 and 552.108 are applicable to the records because the child's mother is accused of having murdered the child. You enclosed a letter from the criminal district attorney of Taylor County asking that the information not be released because of the pending criminal prosecution. The letter also states that release of the requested records could hinder the investigation or prosecution of this case.

Section 552.101 of the Government Code exempts from required public disclosure information that is confidential by law. Section 261.307 of the Family Code states in part:

Section 261.201(a) of the Family Code reads 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.

The requested information consists of “reports, records, communications, and working papers used or developed” in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information, making it generally confidential.

We note that section 261.201(f) contains an access provision that may be applicable to the father of the child:

Notwithstanding Subsection (b),¹ the department, on request and subject to department rule, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Family Code § 261.201(f)(footnote added).

Subsection (f) requires the department to provide certain parties, including a parent of a child who was the subject of an abuse investigation, the information made confidential by subsection (a), with certain redactions. The requestor here is an attorney for the father of a child who had been the subject of an investigation into alleged abuse, prior to her murder.

However, the department’s release of the information pursuant to subsection (f)

¹Section 261.201(b) provides that a court may order the disclosure of these records if a motion has been filed requesting release. Section 261.201(b) also sets out the procedure and conditions upon which a court may order release of the records.

is "subject to department rule. Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 also directs us to consider other departmental rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

A child protective services client may review all information in the client's case record except the identity of the complainant, information exempted from disclosure under the Open Records Act, and information exempted under other state laws.

40 T.A.C. § 700.103. This rule permits a "client" to review that client's case record, with the exception of the complainant's identity and information excepted from disclosure under the Open Records Act and other state laws. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions).

In this situation, the father of the deceased child was a client of the department. However, the department's regulations provide an exception to a client's right to review information when such information is "exempted from disclosure under the Open Records Act." The information at issue is exempted from disclosure under section 552.108 of chapter 552, the Open Records Act. Section 552.108 provides an exemption from disclosure for:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation or prosecution of crime. . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. . . .

This section may be invoked by the proper custodian of information relating to an ongoing investigation or prosecution of criminal conduct. The records at issue may not be disclosed to the requestor. Open Records Decision No. 474 (1987).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: #101752

Enclosures: Submitted documents

cc: Mr. Kenneth G. Leggett
Glandon, Scarborough, Gravley & Leggett, P.C.
Suite 300 Corporate Place
3305 North Third Street
Abilene, Texas 79603
(w/o enclosures)