



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 22, 1997

Mr. Dale W. Lee  
Regional Attorney  
Texas Department of Protective and  
Regulatory Services  
P.O. Box 3700  
Amarillo, Texas 79116-3700

OR97-0111

Dear Mr. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103113.

The Texas Department of Protective and Regulatory Services (the "department") received a request for documents relating to a particular child abuse and neglect investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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.

Subsection (f) of section 261.201 provides:

(f) Notwithstanding Subsection (b), 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.

If the requestor does not represent a parent, managing conservator, or other legal representative of the children who are the subject of this investigation, then the department must withhold the requested information under section 261.201 of the Family Code as applied through section 552.101 of the Government Code. See Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08).

If the requestor does represent a parent, managing conservator or other legal representative of the children who are the subject of this investigation, subsection (f) appears to require the department to provide her the information made confidential by subsection (a), with certain redactions. However, because the department's release of the information pursuant to subsection (f) is "subject to department rule," we must first consider whether the department's rules provide for the disclosure of the requested information to the requestor.

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 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides:

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 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity. See also 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). If the requestor represents a parent, managing conservator, or other legal representative of the children who are the subject of this investigation, we assume that she represents a client for

purposes of section 700.103. This regulation makes an exception to a client's right to review information in the client's case record for information "exempted from disclosure under the Open Records Act." We now proceed to consider whether the information is exempted from disclosure under the Open Records Act.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

You assert that section 552.108 applies to the requested information because it relates to a pending criminal prosecution. You state that the Potter County District Attorney (the "district attorney") is conducting a criminal investigation into this case. You also inform us that the district attorney has requested that the department withhold the requested documents, and you have submitted a letter from Ms. Melinda Mayo, Assistant District Attorney, in which Ms. Mayo requests that the department withhold the requested information because "[t]his case is under current criminal prosecution by this office." Ms. Mayo also states that the release of the requested records could hinder the investigation and prosecution of the case. This office has previously held that any proper custodian of records can claim the section 552.108 exception while an incident involving allegedly criminal conduct is still under active investigation. Open Records Decision Nos. 474 (1987), 372 (1983). Accordingly, if the requestor represents a parent, managing conservator, or other legal representative of the children who are the subject of this investigation, you may withhold the requested information at this time under section 552.108 of the Government Code.<sup>1</sup>

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note that there may be a conflict between the provisions of section 261.201(f) and the department's current regulations, as section 261.201(f) appears to be a parental access provision while the department's regulations permit the department to withhold information from the parent. We are confident that this apparent conflict will soon be resolved by the department's enactment of new regulations.

SES/ch

Ref.: ID# 103113

Enclosures: Submitted documents

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