



August 2, 1999

Ms. Phoebe Knauer  
Deputy General Counsel  
Department of Protective and Regulatory Services  
P.O. Box 149030, MC E-611  
Austin, Texas 78751

OR99-2156

Dear Ms. Knauer:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126207.

The Department of Protective and Regulatory Services (the “department”) received an open records request for the “name, date of birth, and address of all foster care parents and providers.” As a threshold issue, you contend that, as provided by section 261.201 of the Family Code, the requested information is not subject to the provisions of the Public Information Act.<sup>1</sup> Section 261.201(a) of the Family Code provides:

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 [of a child] made under this chapter and the identity of the person making the report; and

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<sup>1</sup>You did not request an open records decision from this office within the ten business days following the department’s receipt of the open records request, creating the legal presumption that the requested information is public. Gov’t Code § 552.302. However, because you argue that the release of the information is governed by laws other than the Public Information Act, we will consider whether you have presented “compelling reasons” for non-disclosure. See Open Records Decision No. 150 (1977).

(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.* [Emphasis added.]

You contend that the language “is not subject to public release under Chapter 552, Government Code” contained in section 261.201(a) reflects the intent of the legislature to exempt information subject to this section from the provisions of the Public Information Act. Although this office questions this novel interpretation of section 261.201(a), we need not reach this issue here because the requested information does not constitute “the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed . . . in providing services as a result of an investigation” under chapter 261 of the Family Code. The department may not withhold the requested information pursuant to section 261.201 of the Family Code.

You next contend that the information at issue is excepted from required public disclosure pursuant to section 40.005 of the Human Resource Code, which provides in pertinent part:

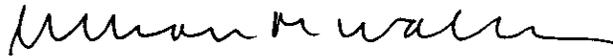
(a) *The department shall establish and enforce rules governing the custody, use, and preservation of the department’s records, papers, files, and communications.*

(b) The department shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department’s programs and must comply with applicable state and federal law *and department rules.* [Emphasis added.]

Section 40.005 does not make any information held by the department confidential, but rather only generally authorizes the department to promulgate rules and “safeguards” regarding the information that it holds. Although section 40.005 would appear to authorize the department to promulgate rules regarding the confidentiality of information pertaining to foster parents, you have not directed our attention to such a rule in the Texas Administrative Code, nor was this office able to identify one. Consequently, the department may not withhold the requested information pursuant to section 40.005. The information must be released.

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

Sincerely,

A handwritten signature in black ink, appearing to read "William M. Walker". The signature is fluid and cursive, with a long horizontal stroke at the end.

William M. Walker  
Assistant Attorney General  
Open Records Division

WMW/RWP/nc

Ref.: ID# 126207

cc: Mr. Matt Goldberg  
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