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By Opinion Committee at 2:05 pm, Aug 22, 2024

RQ-0560-KP



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August 22, 2024

Honorable Ken Paxton
Attorney General for the State of Texas
PO Box 12548
Austin, TX 78711-2548

RE: Opinion Request – Liberty County What constitutes “any evidence that was collected during the investigation of the offense” under Texas Code of Criminal Procedure Art. 56A.052, whether a District Attorney’s Office shall disclose the forensic interview, Texas Department of Family and Protective Services (DFPS) records, and law enforcement offense reports

Dear Sir,

This letter serves as a formal request for your opinion regarding the requirements imposed by 56A.052 Code of Criminal Procedure, of a District Attorney’s Office to turn over any evidence collected during an investigation to the guardian of a victim of an offense under 22.021 Penal Code.

BACKGROUND

On August 15, 2024 Samuel Aaron Kerry plead guilty and was sentenced on two counts of Aggravated Sexual Assault of a Child. On August 19, 2024 the guardian of the victim sent a request for all the evidence in the case to the Liberty County District Attorney’s Office. The State’s case file includes, but is not limited to: drawings made by the victim during the forensic interview, audio/video recording of the victim’s forensic interview in which the victim describes the sexual abuse, DFPS records on the victim and the victim’s family, offense reports and supplements. The guardian is not an alleged perpetrator in any offense. The victim is still a minor.

QUESTIONS

1. What constitutes “any evidence that was collected during the investigation of the offense” under Texas Code of Criminal Procedure Art. 56A.052?



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2. Whether the Liberty County District Attorney's Office is required to release the drawings made by the victim during the forensic interview to the victim's guardian?
3. Whether the Liberty County District Attorney's Office is required to release the audio/video recording of the forensic interview to the victim's guardian?
4. Whether the Liberty County District Attorney's Office is required to release the DFPS records on the victim and her family to the victim's guardian?
5. Whether the Liberty County District Attorney's Office is required to release the offense reports and supplements to the victim's guardian?
6. To the extent that 56A.052 conflicts with other statutes regarding confidentiality and disclosure, which statutes prevail?

STATUTES RELATED TO QUESTIONS:

1. **Texas Code of Criminal Procedure - Art. 56A.052. Additional Rights of Victims of Sexual Assault, Stalking, or Trafficking**
 - (a) If the offense is a sexual assault, a victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:
 - (1) if requested, the right to a disclosure of information regarding:
 - (A) any evidence that was collected during the investigation of the offense, unless disclosing the information would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed; and
2. **Texas Code of Criminal Procedure - Art. 39.15. Discovery of Evidence Depicting or Describing Abuse of or Sexual Conduct by Child or Minor**
 - (b) Property or material described by Subsection (a) must remain in the care, custody, or control of the court or the state as provided by Article 38.45.
3. **Texas Administrative Code - §700.203. Access to Confidential Information Maintained by the Texas Department of Family and Protective Services (DFPS)**



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(a) DFPS may release case record information made confidential under §261.201(a) of the Texas Family Code to any person or entity authorized to receive confidential abuse or neglect information under state or federal law, including the following listed persons or entities:

(11) the person authorized by the court or designated to give medical consent or make educational decisions on the child's behalf; and

(12) any other person or entity responsible for the protection, diagnosis, care, treatment, supervision or education of a child when, in the discretion of DFPS, such information is necessary to properly meet that child's needs.

(g) The same restrictions on disclosure of confidential records released by DFPS apply to re-disclosure by the individual or entity that obtains the documents from DFPS.

4. Texas Family Code - § 261.201. Confidentiality and Disclosure of Information

(a) Except as provided by Section 261.203, 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.

(g) 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.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect



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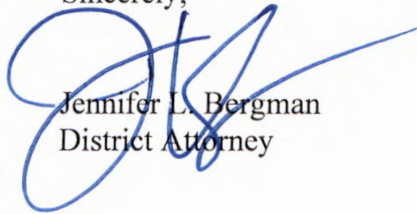
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that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Thank you for your time and assistance in this matter. I would be glad to provide additional information that you may require to address this important matter to the citizens of Liberty County.

Sincerely,



Jennifer L. Bergman
District Attorney