

OBTAINING CONFIDENTIAL RECORDS
AND HOW TO USE THEM

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OBTAINING CONFIDENTIAL RECORDS AND HOW TO USE THEM

I. What records do you want?

A. Complainant's records

1. CPS records
2. Counseling records
3. MHMR records
4. Medical records
5. Advocacy center records
6. 911 tapes
7. Paramedic records
8. Crime victim's application for compensation
9. Statements made to victim's assistance counselor and victim's impact statement
10. School records, including counselor and disciplinary records (Also check with alternative school records)
11. Videotaped interviews
12. Rape crisis center records
13. Women's shelter records
14. Children's hospital records, including CARE team notes and SANE exam and photographs
15. Criminal/juvenile history
16. Psychiatric hospital records
17. Prior incidents and allegations-prior calls for service out to complainant's address
18. Copies of anything DA subpoenaed

B. Client's records

1. School records, including counselor and disciplinary records (Also check with alternative school records)
2. MHMR records
3. Probation records and prior history
4. Offense reports
5. Detention center reports
6. Client statements
7. Copies of anything DA subpoenaed

II. How do you get these records?

- A. If you're lucky, use DA open file policy
- B. Discovery motion and order
- B. Release from client for access to records

C. Records already subpoenaed by DA

1. Article 24.03 (a) of C.C.P. states that “*when a witness has been served with a subpoena, attached or placed under bail at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpoena, no further subpoena shall be issued for said witness.*”

D. Subpoena

E. Protective order

E. Court order

III. What do you need to know about HIPAA?

A. Health Insurance Portability and Accountability Act of 1996

(See Attachment A.)

1. Contrary to many subpoenaed treatment providers’ opinions, especially those of mental health providers, HIPAA does not prevent the disclosure of confidential records pursuant to a subpoena. On the contrary, Section 164.512 (a) (1) of 45 CFR Subtitle A, Subchapter C (“HIPAA”) states that treatment providers may disclose the protected health information pursuant to a court order or subpoena.

2. Court order. No other requirements must be met in order for treatment provider to disclose protected information pursuant to a court order.

3. Subpoena. If you are trying to get records via a subpoena, you must either: a) notify the person whose records you are trying to subpoena and provide documentary evidence of this notice to the treatment provider along with proof that no objections were filed or if objections were filed, those objections have been resolved by the court or b) you must secure a qualified protective order from the court for those records. (See Attachment B.)

IV. What do you do when the witness won’t produce the subpoenaed records?

A. Call subpoenaed witness and check to see if they’re going to obey

the subpoena. Many times, if an attorney calls asking for the records, they will obey the subpoena. In cases of CPS records, they will often deliver the records subject to a protective order. (See Attachments B and C.)

B. If can't work out an agreement for the records, then make sure subpoena's return is on file with the court's records.

C. Check to see if Motion to Quash subpoena or any objection has been filed. If not, then entitled to writ of attachment. See Article 24.12 of C.C.P.

D. File motion for writ of attachment and if necessary, motion for continuance. Have hearing on record requesting writ of attachment for witness and records. Have Judge take judicial notice of return of subpoena. Put on record time and date; no objection or motion to quash has been filed; that witness has failed to appear with records; that records are material; and the reason why records are material.

V. What do you do when the witness produces the records but the Judge won't let you see the records?

A. Have hearing on record.

1. Ask for records to be released to you. Get ruling on record. If denied, don't stop there.

2. Ask for records to be released subject to a protective order. (See Attachments D and B.) Get ruling on record. If denied, don't stop there.

3. Ask to view records in chambers so that you can pick out which parts of records you would like to have copies. (That way Judge doesn't have to go through all the records herself.) Get ruling on record. If denied, don't stop there.

4. Ask to view records in presence of DA and Judge. Get ruling on record. If denied, don't stop there.

5. Ask for in camera inspection of records and release of all records. Get ruling on record. If any records are not released,

request those records again, get ruling and object to those records not being released. Then, ask that records not released be placed under seal and made a part of the record for review on appeal.

B. Argue that records could have exculpatory or impeachment evidence. (Of course, you don't know because you haven't seen the records. That's the whole reason you want to see those records.) Also, depending on your theory of the case and your theory of what may be contained in the records, argue that records may be beneficial to your defense strategy. Those records could corroborate your defense. Every respondent is entitled to put on a defense and have a defense strategy.

C. Remember records do not necessarily have to be admissible in order to have access to them. Admissibility is a separate issue.

VI. What is the relevant law?

A. Sec. 51.17 of Family Code states Rules of Civil Procedure applies except:

- 1) discovery is governed by Code of Criminal Procedure and criminal case law;
- 2) Rules of Evidence applicable to criminal cases govern judicial proceedings;
- 3) Chapter 38 of Code of Criminal Procedure govern judicial proceedings; and
- 4) when in conflict with a specific provision of the Juvenile Justice Code (Title III of Family Code).

B. Rule 509 (b) Texas Rules of Evidence.

There is no physician-patient privilege in criminal proceedings, except the voluntary alcohol or drug treatment privilege.

C. Rule 510 (b) Texas Rules of Evidence.

Mental health information is not privileged in criminal proceedings.

D. Sixth Amendment to United States Constitution and Article I,

Section 10 of Texas Constitution.

Right to confrontation and cross examination

E. Sixth Amendment to United States Constitution and Article I, Section 10 of Texas Constitution.

Right to compulsory process

F. Sixth Amendment to United States Constitution and Article I, Section 10 of Texas Constitution.

Right to effective assistance of counsel

G. Fifth and Fourteenth Amendment to United States Constitution and Article I, Section 19 of Texas Constitution.

Right to due process of law

H. Article 24.03 of C.C.P.

Subpoena

I. Article 24.12 of C.C.P.

Writ of attachment

J. Rule 176 of Rules of Civil Procedure (governing evidence and discovery of civil actions)

Subpoena

K. Rule 176.8 of Rules of Civil Procedure (governing evidence and discovery of civil actions)

Writ of attachment

L. Section 261.201 of Family Code

Confidentiality of CPS records (See Attachment E.)

M. Section 700.203 of Administrative Code

Access to confidential CPS records (See Attachment F.)

N. Section 700.203 of Administrative Code

Videotapes, audiotapes, and photographs (See Attachment G.)

ATTACHMENT A

Relevant Portions of the Privacy Rules

For the reasons set forth in the preamble, 45 CFR Subtitle A, Subchapter C, is amended as follows:

* * *

§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described in §§ 164.506 and 164.508, respectively, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: uses and disclosures required by law.

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. (Emphasis Added)

See § 165.501 - Definitions

Required by law means a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law.

Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

* * *

(e) Standard: disclosures for judicial and administrative proceedings.

(1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

This is What You Have to Do to Obtain Records Via Subpoena

(ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal (Emphasis Added), if:

(A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or

(B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.

(iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting (sic.?) health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:

(A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location

is unknown, to mail a notice to the individual's last known address);

(B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested

(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section. (Emphasis Added)

ATTACHMENT B

CAUSE NO. 323-76687J-04

IN THE MATTER

* IN THE 323rd DISTRICT

OF

* COURT OF

* TARRANT COUNTY, TEXAS

PROTECTIVE ORDER

On June 16, 2004, the Women's Center, through its representatives, and pursuant to a subpoena duces tecum requested by Respondent's attorney, presented this Court with the counseling records of the alleged victims and . IT IS ORDERED that such records be tendered to Respondent's attorney for review pursuant to the subpoena duces tecum. IT IS FURTHER ORDERED that such records may be used solely for the purpose of preparation for trial of this cause and for the trial of this cause, and for no other purpose whatsoever. IT IS FURTHER ORDERED that these records shall not be disclosed to any persons except the attorneys of record in this cause, and employees or agents of such attorneys to whom it is necessary for such information to be shared for purposes of preparation for trial or for the trial of this cause; actual or potential expert witnesses or consultants to whom it is necessary for such information to be shared for purposes of the trial of this cause; and the Respondent in this cause for the sole purpose of preparation for trial of this cause. IT IS FURTHER ORDERED that all of the records (including all copies made) tendered to Respondent's attorney pursuant to the subpoena duces tecum be returned to the Court at the end of this proceeding.

SIGNED on September _____, 2004.

JUDGE JEAN BOYD

ATTACHMENT C

CAUSE NO. 323-76687J-04

IN THE MATTER

* IN THE 323rd DISTRICT

OF

* COURT OF

* TARRANT COUNTY, TEXAS

ORDER

**ON MOTION TO QUASH SUBPOENA DUCES TECUM,
FOR IN CAMERA INSPECTION AND FOR PROTECTIVE ORDER**

On this date a Motion to Quash Subpoena Duces Tecum, and Alternatively for In Camera Inspection and Protective Order was presented to this Court by the Texas Department of Protective and Regulatory Services (“the Department”).

The Court, after hearing the evidence and arguments of counsel, finds that the records and testimony of the Department and its subpoenaed agent are confidential, and protected from disclosure by law. However, the Court finds, further, *in-camera* inspection of the documents is appropriate and required for a determination as to whether the disclosure of the documents, records, or information concerning matters contained in the records, which would be otherwise confidential pursuant to Section 26 1 .20 1 of the Texas Family Code, is essential to the administration of justice in the instant case, and not likely to endanger the life or safety of the child(ren) the subject of the report(s) of suspected abuse or neglect, the person(s) who made the report(s) of suspected abuse or neglect, or any other person who participated in the investigation of reported abuse or neglect.

IT IS ORDERED, THEREFORE, that the Department’s motion is GRANTED, in part; and FURTHER ORDERED that the Department shall deliver an unredacted copy of its records concerning reports of suspected abuse or neglect of the child or children named in the subpoena *duces tecum* issued in this cause, and the records of the Department’s investigation of such report(s), to this Court for *in camera* inspection immediately.

If, after *in camera* inspection the court determines that the records and information should be further disclosed, the records will be made available to all attorneys of record in this cause; AND FURTHER ORDERED the unredacted records thus released shall be available for inspection, and for copying, by the attorneys of record in this case, or by such other persons as are named in this order, and by **no other person**.

IT IS FURTHER ORDERED that all information contained in the unredacted records concerning the minor child or children named in the records, the person or persons reporting suspected abuse or neglect of the child or children named in the records, and any person or persons who participated in the investigation of the report of suspected abuse or neglect of the child or children named in the records, other than law enforcement personnel or the Department’s own investigators/employees, and all information concerning substitute caregivers, collateral contacts, and service providers, and any records or information contained in the records which is otherwise confidential by law or by designation on the face of the record, **shall be deemed and considered CONFIDENTIAL, and may be used solely for the purpose of preparation for trial of this cause, and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms of this Order.**

IT IS ORDERED, FURTHER, that *Confidential* information may be disclosed ONLY to:

Order on Motion to Quash Subpoena

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___(a) the attorneys of record in this cause, and employees or agents of such attorneys to whom it is necessary for such information to be shared for purposes of preparation for trial or for the trial of this cause;

___(b) actual or potential expert witnesses or consultants to whom it is necessary for such information to be shared for purposes of the trial of this cause;

___(c) the Defendant in this cause, for the sole purpose of preparation for trial of this cause, only upon showing of good cause or upon written agreement of the attorneys for the State and the Department.

IT IS ORDERED that a copy of this Order shall be attached to the records deposited with the Clerk and that all such persons to whom information herein designated as *Confidential* is disclosed shall be deemed to be advised of the terms of this Order and shall be bound by its terms.

IT IS ORDERED that, in the event any party wishes to use *Confidential* information in any affidavits, briefs, memoranda of law, or other papers filed with this court in this cause, such information shall be filed under seal, and the Clerk of this Court is hereby directed to maintain all such information under seal.

Any person who discloses Confidential information contained the records protected by this Order will be subject to both, criminal and civil penalty.

SIGNED on _____.

JUDGE PRESIDING

* COURT OF
* TARRANT COUNTY, TEXAS

VIDEO TAPE PROTECTIVE ORDER

It is hereby ORDERED that Petitioner shall make a copy of the video tape(s) of the child victim(s) in this cause if the attorney for the Respondent provides Petitioner with a blank video tape. Petitioner is further ORDERED to release said copy to _____, Attorney of Record for the Respondent.

_____ Attorney for the Respondent, is hereby **ORDERED**
to:

1. Maintain custody of the copy of the tape, and not let anyone else, including the Respondent, possess the copy, and
2. Not make any additional copies of the tape, and
3. Not let anyone view the copy of the tape except for the Attorney of Record for the Respondent, Respondent, or an expert witness whose opinion requires viewing of the tape, and
4. Return the copy of the tape to Petitioner immediately upon disposition of this cause.

SIGNED and ENTERED this the ____ day of _____ 2004.

PRESIDING JUDGE

ATTACHMENT E

Chapter 261. Investigation of Report of Child Abuse or Neglect

§261.201

Subchapter C. Confidentiality and Privileged Communication

Introductory Comment

The only privileged communication recognized by this chapter are those between an attorney and client. This testimonial privilege protects confidential communications; it is not a blanket privilege that immunizes an attorney from responsibility to report injury to a child caused by abuse or neglect.

CLE/Other Legal Publications

Evidence: predicates, presumptions, and privileges. (Workshop) 1996 Adv. Fam. L. Texas' clergyman-penitent privilege and the duty to report suspected child abuse, 38 Baylor L. Rev. 231 (1986).

Texas Rules of Evidence Handbook. Steven Goode & M. Michael Sharlot, 20 Houston L Rev. 278(1983).

Leading Case

TDHS v. Benson, 693 S.W.2d 236 (Tex. App.—Austin 1995 writ denied) (child abuse report is confidential; court voids agency policy regarding second reports and professionals, but governmental immunity applies to agency)

§261.201. Confidentiality and Disclosure of Information.

(a) (H.B. 1826 and LB. 359) 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 by 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.

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information the court determines that the disclosure of the requested information is:

§261.201

Sampson & Tindall's Texas Family Code Annotated

(A) essential to the administration of justice; and (B) is not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

- (ii) a person who makes a report of alleged or suspected abuse or neglect or
- (iii) any other person who participates in an investigation of reported abuse or neglect.

(c) (HB. 1826) In addition to Subsection (b), a court on its own motion, may order disclosure of information that is confidential under this section if:

(1) the order is rendered at a hearing for which all parties have been given notice;

(2) the court finds that disclosure of the information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of;

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect;

(iii) any other person who participates in an investigation of reported abuse or neglect; and

(3) the order is reduced to writing or made on the record in open court,

(d) The adoptive parents of a child who was the subject of an investigation and to examine and make copies of any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child. The department may edit the documents to protect the identity of the biological parents and any other person whose identity is confidential.

(e) Before placing a child who was the subject of an investigation, the department shall identify the prospective adoptive parents of their right to examine any report, record, working paper, or other information in the possession, custody, or control of the state that pertains to the history of the child.

(f) The department shall provide prospective adoptive parents an opportunity to examine information under this section as early as practicable before placing a child.

(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.

Comment

This section was extensively rewritten in 1995 to clarify that information in DPRS records, including the name of a person who reports abuse or neglect, is confidential, and to specify the circumstances under which such information

can or must be released, DPRS records will no longer be obtainable merely by filing a subpoena. A party seeking access to confidential information must file a motion and serve notice of a court hearing on DPRS. After hearing a court may order disclosure of confidential information if the court finds that such release is essential to the administration of justice and would not endanger the person who made the report, the child, or any other person who participated in the investigation. An exception is provided to this process to make de-identified copies of the child's record available to parents, managing conservator etc. (HG.B.)

ATTACHMENT F

§700.203. Access to Confidential Information Maintained by the Texas Department of Protective and Regulatory Services (TDPRS)

Texas Administrative Code, Title 40. Social Services and Assistance

... Part XIX. Texas Department of Protective and Regulatory Services
Chapter 700. Child Protective Services
Subchapter B. Confidentiality and Release of Records

to the extent required by state or federal law, or to the extent deemed necessary by TDPRS for the protection and care of children, TDPRS may release case record information made confidential under §261.201(a) of the Texas Family Code to the following listed persons or entities:

- signed duties;
- (1) TDPRS staff, including authorized volunteers, as necessary to perform their
 - (2) a properly constituted authority, and its multi-disciplinary team members, legally authorized to handle or assist in the investigation prosecution, or resolution of cases of suspected child abuse or neglect or to provide services to the child or the child's family. properly constituted authorities include, but are not limited to, child advocacy centers, child fatality review teams, citizen review teams, advocacy, Inc, county child welfare boards, and any authority mandated under another state's law to investigate allegations of child abuse or neglect;
 - (3) local, state, or federal law enforcement officials for the purpose of investigating allegations of child abuse or neglect or for the purpose of investigating allegations of false or malicious reporting of alleged child abuse or neglect,
 - (4) a physician who has before him a child who the physician reasonably suspects may be the victim of child abuse or neglect and the physician requires this information to provide a diagnosis, prognosis, or treatment for the child; .
 - (5) a local, state, or federal government official when specifically required by law or when deemed necessary for the protection and care of a child;
 - (6) a grand jury; .
 - (7) an attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse and neglect;
 - (8) a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse and neglect;
 - (9) an attorney of TDPRS, the attorney general of the state, or a county attorney or district attorney, when such attorney represents the state in a proceeding arising out of an investigation of child abuse or neglect or in a proceeding to collect child support for a child in the temporary or permanent managing conservatorship of TDPRS;
 - (10) a member of the state legislature when necessary to carry out that members official duties; and
 - (11) any other person or entity responsible for the protection, diagnosis care, treatment, supervision or education of a child who is the subject of a report or record of abuse or neglect, when, in the discretion of TDPRS, such information is necessary to properly meet that child's needs.
- (b) In accordance with §261.201(f) of the Code, and upon a properly submitted request, TDPRS shall provide access to confidential case records to the parent or other legal guardian of a child who was the alleged or actual victim

of child abuse and neglect, provided that the records are redacted as described in §700.204 of this title (relating to Redaction of Records Prior to Release). For purposes of this subsection a parent or other legal guardian means any parent, adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian or other legal representative of the child, provided that the requestor's parental or other legal relationship to the child has not been terminated at the time the request for information is made. TDPRS may release confidential case records, or information contained therein, to a minor child who is the subject of those records if TDPRS deems the release to be in the best interest of the minor child.

(c) Upon a properly submitted request, TDPRS shall provide access to confidential investigation records to an individual who was alleged or designated by TDPRS to be a perpetrator in that investigation, whether or not that individual is a parent of the alleged victim provided that the records are redacted as described in §700.204 of this title (relating to Redaction of Records Prior to Release). A release under this subsection is limited to that portion of TDPRS's records which were developed during the course of an investigation into child abuse or neglect and shall not include records related to the provision of services to a child or the child's family as a result of the investigation.

(d) In accordance with §261 .201 (c) of the Code, and upon a properly submitted request, TDPRS shall provide access to confidential case records to the adoptive or prospective adoptive parents of a child who was, or to an adult who was as a child, the subject of those records, provided that the records are redacted in accordance with §700.204 of this title (relating to Redaction of Records Prior to Release) and provided that the identity of the child's biological parents is protected. When releasing information under this subsection, TDPRS need not redact the record to protect the identity of a biological parent whose identity is already known to the requestor. .

(e) An individual not otherwise entitled to have access to confidential records under this section but who participated in, cooperated with, or otherwise contributed to an investigation of child abuse or neglect, may have access to only that portion of the case records obtained directly from or pertaining directly to that individual.

(f) Notwithstanding any other provision in this subchapter, TDPRS shall not disclose any record or information which, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

ATTACHMENT G

§700.206. Videotapes: Audiotapes and Photographs

Texas Administrative Code, Title 40. Social Services and Assistance
Part XIX. Texas Department of Protective and Regulatory Services
Chapter 700. Child Protective Services
Subchapter B. Confidentiality and Release of Records

(a) Individuals who are authorized under §700.203 of this title (relating to Access to Confidential Information Maintained by the Texas Department of Protective and Regulatory (TDPRS) to have access to investigation records or case records may view and

or listen to any videotapes, audiotapes or photographs which are a part of those records. Access to this category of records will be permitted only in controlled areas, designated by TDPRS, at a time mutually convenient to the requestor and TDPRS. When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise have access to these records unless the participation of this individual is deemed by TDPRS to be appropriate under the circumstances surrounding the request.

(b) Copies of videotapes, audiotapes, and photographs may be provided to the individuals or entities identified §700.203(a) of this title (relating to Access to confidential Information Maintained by the Texas Department of Protective and Regulatory Services (TDPRS)), only if, in the judgment of TDPRS, the provision of TDPRS, the provision of a copy is essential to the investigation, prosecution, or resolution of a case. Copies of videotapes, audiotapes, and photographs will not be provided to any other individual unless so ordered by a court pursuant to §251.201 (b) of the Code.