



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Mr. Robert L. Harris
Assistant City Attorney
Law Offices of Sifford & Anderson, L.L.P.
6300 NationsBank Plaza
901 Main Street
Dallas, Texas 75202

OR94-295

Dear Mr. Harris:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24755.

The City of Cedar Hill (the "city"), which you represent, received two open records requests from an individual for certain information. In his February 7, 1994 request, the requestor seeks

a copy of each and every record that contains the [requestor's and his family's] name, or home address, or mailing address or telephone number, or bank accounts, or Social Security Number, or any other private or confidential information, or any other means of identification used by the City of Cedar Hill to identify the [requestor and his family] both in written files and electronic data base files.

You contend that certain records pertaining to an investigation of an alleged instance of child abuse are confidential and thus must be withheld from the requestor pursuant to section 552.101 of the Government Code.¹

¹Because you have not argued that any other records are excepted from required public disclosure, we assume that the city has released to the requestor all remaining records coming within the ambit of the request.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although you contend that the records at issue are made confidential by section 51.14(d) of the Family Code,² these records come under the subject matter of chapter 34 of the Family Code, which concerns, *inter alia*, reports of child abuse to local law enforcement agencies. Section 34.08(a) of the Family Code provides:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. Neither subsection is applicable to the current request.

Because you have not cited any specific regulation that the city has adopted with regard to the release of this type of information, we assume that no such rule exists. Given that assumption, the report at issue is confidential pursuant to section 34.08(a) of the Family Code. *See* Open Records Decision No. 440 (1986) at 2.

We further note that although the requestor of these records is the father of the allegedly abused child, he does not have a special right of access to these records under section 552.023 of the Government Code, which provides in pertinent part:

A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Gov't Code § 552.023(b) (emphasis added). In Open Records Decision No. 587 (1991) at 3-4 (copy enclosed), this office held that because section 34.08 is intended to protect interests other than the privacy of those to whom the records relate, those parties do not have a special right of access to the records under the predecessor statute of section 552.023. Accordingly, the city may not release these records to the requestor. *But see* Fam. Code § 34.051(3) (right of parent investigated for child abuse to review investigation records held by Texas Department of Protective and Regulatory Services).

²Section 51.14(d) of the Family Code concerns the public release of law enforcement records pertaining to delinquent children and children in need of supervision.

In his second request to the city the requestor seeks, *inter alia*, a "copy of any documents, correspondence or case cites the City of Cedar Hill would use in a court case to support their position to assess late charges" to the requestor's utility bill. You have submitted to this office as responsive to the request a copy of a legal memorandum prepared by you for the city. You contend that this memorandum comes under the protection of the attorney-client privilege. Although you raise the attorney-client privilege in the context of section 552.101 of the Government Code, this privilege is more properly deemed to be an aspect of section 552.107(1), which protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." See Open Records Decision No. 574 (1990) (copy enclosed). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Because the legal memorandum consists solely of an attorney's legal advice and opinion to his client, we agree this document is protected by the attorney-client privilege. Accordingly, the city may withhold this record in its entirety pursuant to section 552.107(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/tho

Ref.: ID# 24755

Enclosures: Open Records Decision Nos. 574, 587
Submitted documents