



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Mr. Dean A. Poos
Records/Comm. Supervisor
Rowlett Police Department
P.O. Box 370
Rowlett, Texas 75030-0370

OR94-588

Dear Mr. Poos:

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# 26068.

The Rowlett Police Department (the "department") received an open records request for all records relating to each of the department's arrests of the requestor. You contend that certain of the requested documents that relate to the requestor's arrest for aggravated assault of a child come under the protection of common-law privacy.¹ However, because we resolve your request on other grounds, we need not discuss the extent to which these records would otherwise be protected from public disclosure by common-law privacy.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.101 of the Government Code because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* Government Code § 552.352. Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Chapter 34 of the Family Code concerns reports of, *inter alia*, sexual abuse of a child to local law enforcement agencies. *See* Fam. Code § 34.012(1)(E). Section 34.08(a) of the Family Code provides:

¹Because you do not argue that the remaining documents are excepted from public disclosure, we assume that the department is making those records available to the requestor.

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 department has adopted with regard to the release of this type of information, we assume that no such rule exists. Given that assumption, the records at issue are 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 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 department may not release these records to the requestor.²

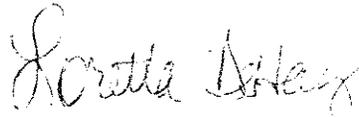
²Children's Protective Services ("CPS"), however, has promulgated a regulation governing the release of CPS case information to CPS clients which provides as follows:

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. Although we do not address here whether the requestor is a client of CPS for purposes of the above-quoted regulation, we do note that the requestor may be entitled to review the information in the possession of CPS under the regulation.

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/rho

Ref.: ID# 26068

Enclosures: Open Records Decision No. 587
Submitted documents