



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 30, 1995

Ms. Amy L. Bergstrom  
Records/Communication Supervisor  
Wharton Police Department  
101 West Burleson  
Wharton, Texas 77488

OR95-017

Dear Ms. Bergstrom:

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# 28171.

The Wharton Police Department (the "department") received an open records request for the file on its investigation of an alleged sexual assault of a child. Because you state that "the case is still . . . active with our criminal investigation division," we infer that you seek to withhold the requested records pursuant to the "law enforcement" exception, section 552.108 of the Government Code.

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. However, 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 the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Because we resolve your request under section 552.101, we do not address the extent to which section 552.108 applies to these records.

Chapter 34 of the Family Code concerns, among other things, reports of child abuse to local law enforcement agencies. Section 34.08(a) of the Family Code provides:

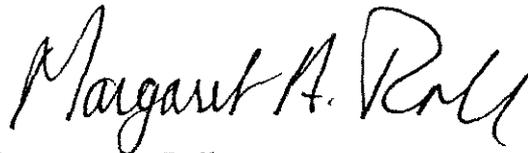
Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating 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 department has adopted with regard to the release of this type of information, we assume that no such regulation 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. Accordingly, the department must withhold the requested records in their entirety.

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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RWP/rho

Ref.: ID# 28171

Enclosures: Submitted documents

cc: Mr. Theodore Vargas  
1610 Briar Lane, #5-B  
Wharton, Texas 77488  
(w/o enclosures)