



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

Mr. James T. Russell
Administrative Assistant
Office of the District Attorney
27th Judicial District
P.O. Box 540
Belton, Texas 76513

OR95-555

Dear Mr. Russell:

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# 30344.

The Bell County District Attorney's Office received an open records request for a copy of a video tape your office received from the Texas Department of Human Services ("DHS") of an interview between a DHS employee and the child victim of a sexual criminal offense. You state that you have allowed the requestor, who is the mother of the child victim, to previously view the video tape in your office. You contend, however, that the video tape is made confidential by section 34.08 of the Family Code and your office therefore is authorized to withhold a copy of the tape from the requestor.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) 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:

¹Because we resolve your request under section 34.08 of the Family Code, we need not address the applicability of the other exceptions you raise.

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*. [Emphasis added.]

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.

You state that your office allowed the requestor to view the video tape "for investigative purposes"² and contend that 1) such access is authorized under section 34.08 and that 2) granting such access does effect a waiver of your office's authority to withhold from the requestor copies of the video tape. We agree with both of these contentions. Apparently, it is your office's policy to in certain circumstances grant access to, but not copies of, such materials to close relatives of child abuse victims. We believe that allowing such access does not waive the applicability of section 34.08 for subsequent requests for copies of the information. Consequently, your office is not required to release to the requestor a copy of the video tape.³

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 should not be relied upon as a previous determination under section 552.301 regarding any other records.

²You also inform us that the criminal defendant's attorney was allowed to view the tape for purposes of due process.

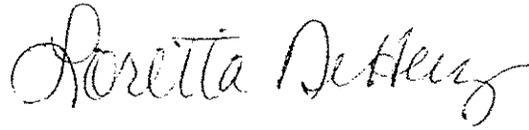
³Children's Protective Services ("CPS"), however, has promulgated a regulation governing the release of CPS case information to CPS clients which provides as follows:

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. See also *Texas Department of Human Services v. Benson*, 893 S.W.2d 236, 242 (Tex. App.—Austin 1995, no writ (identity of all individuals who report child abuse confidential)). 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 might be entitled to review the information in the possession of CPS under the regulation.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Loretta DeHay". The signature is written in a cursive, flowing style.

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 30344

Enclosure: Video tape