



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 15, 1996

Mr. Darrell W. Bush
Detective - Lt.
Nederland Police Department
P.O. Box 1165
Nederland, Texas 77627

OR96-0542

Dear Mr. Bush:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39459.

The Nederland Police Department (the "department") received a request for a copy of all documents generated in connection to the investigation of a named individual. The department has two investigation files from closed criminal cases that are responsive to the request. In one case the named individual was charged with enticing a child; in the other he was charged with harboring a runaway child. Concerns about the possibility of child abuse were raised in both cases. Although the concerns about sexual abuse "were not substantiated" in either case, you are concerned that the files may be confidential pursuant to section 34.08 of the Family Code.

The department received the request for information on February 20, 1996. You requested a decision from this office on March 13, 1996, more than ten days after the department received the request for information. Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The fact that information is confidential by law is sufficiently compelling to overcome the presumption of openness. Open Records Decision No. 150 (1977). Therefore, we will address your concern that the requested information is made confidential by section 34.08 of the Family Code. The Seventy-fourth Legislature repealed section 34.08 of the Family Code and added section 261.201 to the Family Code. See Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 161 (Vernon). Section 262.201(a) provides as follows:

(a) 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 in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The department received a report of alleged sexual abuse of a child in connection with both criminal cases. The department apparently investigated the allegations, because the department determined that there was not sufficient evidence to sustain the allegations in either case. As allegations of abuse were investigated in both cases, we believe that both investigation files are protected by section 261.201(a)(2). Therefore, the department must withhold the files under section 552.101 as information deemed confidential by law.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39459

Mr. Darrell W. Bush - Page 3

Enclosures: Submitted documents

cc: Mr. Quentin D. Price
Law Office of Ed W. Barton
P.O. Box 488
Orange, Texas 77631-0488
(w/o enclosures)