



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1996

Mr. Harvey Cargill, Jr.  
City of Abilene  
P. O. Box 60  
555 Walnut  
Abilene, Texas 79604.

OR96-2189

Dear Mr. Cargill:

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# 102132.

The City of Abilene (the "city") received an open records request asking for the release of information relating to the investigation and prosecution of three cases, "11,044-B . . . 11, 043-B . . . 11,042 . . .," of aggravated sexual assault of two children including:

- (1) The police report/ the records of an oral statement of child;
- (2) Affidavit for warrant for arrest and detention;
- (3) Warrant;
- (4) Complaint;
- (5) Information.

You contend that the requested records are confidential under section 552.108 of the Government Code.

The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Consequently, we shall examine the immediate facts under 552.101.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." At the time the conduct occurred the

applicable provision to the instant facts was section 34.08 of the Family Code. The Seventy-fourth Legislature repealed section 34.08<sup>1</sup> and amended the Family Code by adding section 262.201 which reads 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 other wise 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.

We observe that the documents submitted under Exhibit B are "reports, records, communications, and working papers used or developed in an investigation" pursuant to chapter 261 of the Family Code. *See* Family Code §§ 262.001 (defining abuse and neglect), 261.103 (report shall be made to any local or state law enforcement agency). Accordingly, we conclude that the documents are related to an incident of alleged child abuse or neglect, and are records developed in an investigation under chapter 261 of the Family Code. The documents are therefore confidential and must be withheld in their entirety under section 552.101 of the Government Code.<sup>2</sup>

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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>See Act of April 6, 1995, 74th Leg., R.S., ch.20, sec. 1, 1995 Tex. Sess. Law Serv. 113, 161 (Vernon); Act of May 25, 1995, 74th Leg., R.S., ch. 751, sec. 93, 1995 Tex. Sess. Law Serv., 3888, 3924 (Vernon). *See also*, Open Records Decision No. 176 (1977) applying confidentiality as deemed by law to instances involving the investigation of reports involving suspected child abuse under section 34.08 of the Family Code.

<sup>2</sup>As we resolve this matter under section 552.101, we need not address your argument under section 552.108.

JIM/rho

Ref.: ID#102132

Enclosures: Submitted documents

cc: Mrs. Mary Robinson  
1518 S. 6th  
Abilene, Texas 79602  
(w/o enclosures)

